

EXHIBIT A

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF FLORIDA
3 MIAMI DIVISION
4 CASE NO. 23-CV-23004-JB

4 JANE DOE, a minor, by and Miami, Florida
5 through her mother and next
6 friend, Mother Doe,

6 Plaintiff, September 18, 2024

7 vs. 2:15 p.m. to 5:15 p.m.

8 ACADEMIR CHARTER SCHOOLS, INC. Pages 1 to 156

9 Defendant.

11 EVIDENTIARY MOTION HEARING
12 BEFORE THE HONORABLE EDWIN G. TORRES
13 UNITED STATES DISTRICT JUDGE

13 APPEARANCES:

14 FOR THE PLAINTIFF: KYLE T. MACDONALD, ESQ.
15 DEREK SMITH LAW GROUP, PLLC
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18 FOR DEFENDANT ACADEMIR: JULIE B. KARRON, ESQ.
19 KELLEY KRONENBERG
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21 FOR DEFENDANT SUPERIOR CHARTER:

22 SCOTT YOUNT, ESQ.
23 GARRISON, YOUNT, FORTE & MULCAHY
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25

1 STENOGRAPHICALLY REPORTED BY:

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I N D E X

WITNESS

OLIVIA BERNAL
(Mr. Yount)
(Mr. MacDonald)

JAMES LEE STAFFORD
(Mr. MacDonald)
(Mr. Yount)

HABIB HASBUN
(Mr. Yount)
(Mr. MacDonald)

Direct Cross Redirect

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EXHIBITS

Plaintiff's Exhibit No. 8

Plaintiff's Exhibit No. 3

Plaintiff's Exhibit No. 10

Plaintiff's 2 Binders through 24

FOR ID ADMITTED

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1 (Call to the Order of the Court.)

2 THE COURT: Have a seat.

3 COURTROOM DEPUTY: Calling case Jane Doe versus
4 Academir Charter Schools, Incorporated, case number
5 23-20034-Civil-Judge Becerra.

6 Counsel, your appearances for the record, starting with
7 the plaintiff.

8 MR. MACDONALD: Good afternoon, Kyle MacDonald for the
9 plaintiff.

10 MR. YOUNT: Good afternoon, Your Honor, Scott Yount for
11 the defendant, Superior Charter.

12 MS. KARRON: Good afternoon, Your Honor, Julie Karron
13 on behalf of Academir Charter School, Inc.

14 THE COURT: Good afternoon everybody.

15 We are here on a motion for sanctions that was filed, I
16 believe, by the plaintiff, and then the Court reviewed it and
17 decided that we may need an evidentiary hearing on it, so we
18 set it for this afternoon.

19 Let me first turn -- first, for housekeeping purposes,
20 I read your motion. Is there anything that the plaintiff
21 wishes to introduce to supplement the motion?

22 MR. MACDONALD: Thank you, Your Honor.

23 We have prepared a binder with exhibits for the Court.
24 Most of them are the exhibits included in the motion but a few
25 supplemental items, and counsel for the defendants have

1 informed us that they do not object to any of the exhibits with
2 the exception of the plaintiffs' expert report which they do
3 object to. So, with Your Honor's permission, I'd like to
4 provide that to the Court and enter this into evidence.

5 THE COURT: Sure. Okay.

6 Did you intend to call any witnesses affirmatively on
7 your side of the case?

8 MR. MACDONALD: We will be calling Ms. Olivia Bernal
9 and also Mr. Jim Stafford, the expert witness in the case as
10 well.

11 THE COURT: Okay. What is the name of the expert, I'm
12 sorry?

13 MR. MACDONALD: Jim Stafford.

14 THE COURT: Okay. Turning to counsel for the
15 plaintiff.

16 MR. YOUNT: Thank you, Your Honor.

17 We rely on the attachments to our response, our amended
18 response in opposition to plaintiff's motion.

19 We also will question Ms. Bernal. We also have our
20 clients' outside IT consultant to testify, Mr. Habib Hasbun,
21 H-A-S-B-U-N.

22 THE COURT: How do you spell that again, I'm sorry?

23 MR. YOUNT: H-A-S-B-U-N as in Nancy.

24 THE COURT: Hasbun. And he works for the defendant?

25 MR. YOUNT: He's a contractor. He is a third-party

1 contractor who handles their IT.

2 THE COURT: Okay.

3 MR. YOUNT: Great. Then we also do intend to call
4 Mr. MacDonald for a very brief question.

5 THE COURT: Okay. Mr. Who again?

6 MR. YOUNT: Plaintiffs' counsel, Mr. MacDonald.

7 THE COURT: Okay. Well, we will deal with that when we
8 get there.

9 Well, it sounds like what we should do to maximize our
10 time is, let's get the evidence in the factual dispute in the
11 briefing from Ms. Bernal.

12 Do you wish to direct her first?

13 MR. YOUNT: I'd be glad to.

14 THE COURT: Okay. Why don't we do it that way first
15 then.

16 Let's get that testimony in and see where we are.

17 (The witness, Olivia Bernal, was duly sworn.)

18 THE COURT: Please have a seat, ma'am, and state and
19 spell your name for the record.

20 THE WITNESS: Olivia Bernal, O-L-I-V-I-A, Bernal,
21 B-E-R-N-A-L.

22 THE COURT: Thank you.

23 MR. YOUNT: May we proceed, Your Honor?

24 THE COURT: Yes, thank you.

25 DIRECT EXAMINATION

1 BY MR. YOUNT:

2 Q. Ms. Bernal, would you please introduce yourself to the
3 judge, tell him who you are, how far you went to school and
4 what you do?

5 A. Olivia Bernal. I am the Chief Operation Officer for
6 Academir Charter Schools and Superior Charter School Services.
7 I went to school for about eight years in education. I have a
8 specialist degree. I have two master's degree, a specialist
9 degree and leadership. I have been in education for over
10 28 years.

11 I have served as a teacher, curriculum instructional coach,
12 assistant principal, principal, mentor teacher, and now chief
13 operating officer for a group of charters.

14 Q. Will you tell -- explain to the Court what Academir is.
15 What is it?

16 I know it's a charter school, but if you would just explain
17 what age groups it is.

18 A. We are a group of charter schools under the Academir
19 Schools, Inc. We have 11 total campuses. They range from
20 elementary to high school.

21 We predominantly started with the elementary schools and
22 moved onto K-8 centers and just this past year opened up our
23 first high school.

24 Q. In the school that is the subject of this lawsuit where
25 Jane Doe was a student, what school was that?

1 A. Academir Charter School west, a K-8 school in the West
2 Kendall area.

3 Q. The student at issue was in what grade when the issue
4 allegedly happened?

5 A. Kindergarten.

6 Q. What is your role with respect to that specific school?

7 A. With that particular school and all others I serve as
8 support, anything dealing with the day-to-day operations of the
9 school, guidance for the leadership team, particularly the
10 principal, to ensure that they are in compliance with their
11 regulations as regards to charter schools, the charter school
12 contract, the board rules and regulations, the state statutes
13 and just ensure that we are in compliance with all requests,
14 submissions, the charter contract in itself.

15 Q. I know you do this every day, but this is all new to me.
16 So, would you explain to the Court the relationship between
17 your schools and the Miami-Dade County Schools? How does that
18 interaction work?

19 A. So, the charter schools operate under the sponsorship of
20 Miami-Dade County. Our students are Miami-Dade Public School
21 students. However, our employees are Academir Charter School,
22 Inc. employees.

23 When we apply for a charter school, the charter school goes
24 into an agreement with the sponsoring school district, in this
25 case Miami-Dade County Public Schools, and the agreeance is is

1 that we have to follow certain requirements in order to operate
2 and function in Miami-Dade.

3 Q. Is one of the requirements that Miami-Dade imposes upon you
4 the obligation to establish certain policies and procedures?

5 A. Yes, that's correct.

6 Q. Explain to the Court how your school has adopted the
7 procedures and what the base of the -- what is the basis of the
8 procedures that have been adopted by your school?

9 A. So, under our contract there are certain requirements for
10 safety of students, for reporting assessment, curriculum.

11 In this particular case, with regards to the
12 anti-discrimination policies, our students are Miami-Dade
13 County School students, so we have to abide by all those
14 policies and statutory requirements.

15 Q. Okay. So, the incident is alleged to have happened here on
16 January 20th, 2023. Is that your understanding?

17 A. That's correct.

18 Q. So that would have been the 2022-2023 school year.

19 Is that right?

20 A. Yes.

21 Q. Did your school -- did the school that Jane Doe went to,
22 did it have written policies and procedures for that school
23 year?

24 A. Yes, they did.

25 Q. Did it have written policies and procedures for Title IX?

1 A. Yes, we did.

2 Q. I am going to show you, and I ask you to bring this -- what
3 is this?

4 A. That's a policies and procedures binder that we keep in
5 house on a year-to-year basis to ensure that, you know, all of
6 the board-approved policies for that fiscal year are
7 maintained.

8 Q. Does that book -- that's for the '24-'25 school year?

9 A. That is correct.

10 Q. Does that have Title IX Policies and Procedures?

11 A. It does.

12 Q. Did a book like that exist for the 2022-2023 school year?

13 A. It did.

14 Q. Okay. And those were Academir's policies. Correct?

15 A. Correct.

16 Q. Now, you are aware -- obviously, you were aware that there
17 are a lot of issues concerning the production of the documents,
18 and I will represent to you and represent to the Court that we
19 made a mistake when we made our initial production and did not
20 produce the Title IX documents.

21 Did you become aware of that at some point?

22 A. When I actually had my deposition that was something that
23 was discussed, and prior to that nobody said, hey, give me your
24 document so I can send them to a lawyer. Prior to that I had
25 no knowledge of that.

1 Q. You were deposed in May of 2024. Correct?

2 A. Yes.

3 Q. Okay. And is that -- essentially, around the time of your
4 deposition was the first time that you really played an active
5 role in assisting in the defense of this case?

6 A. Yes.

7 Q. Okay. Now, when we realized that we had not produced the
8 Title IX documents, what did you do?

9 A. I provided my employer at the time -- well, my current
10 employer, I sent her the records and the attorney so that they
11 can submit what I had in my possession.

12 Q. Did you make up --

13 THE COURT: Who is "her"?

14 THE WITNESS: Ms. Esther Mir, and Julie --

15 THE COURT: Who is she?

16 THE WITNESS: She is the president of Superior Charter
17 School Services. She is my boss.

18 THE COURT: I see. Okay.

19 BY MR. YOUNT:

20 Q. Did you create or make up or develop any documents that you
21 then presented as the Title IX Policies and Procedures?

22 A. No, sir.

23 Q. They existed at the time --

24 A. They did.

25 Q. -- of the incident?

1 A. That is correct.

2 THE COURT: Who was responsible for the management of
3 the litigation from your side of things?

4 THE WITNESS: So, my boss, Rolando Mir and Esther Mir
5 were aware of the situation. I didn't know that. I was
6 deposed until later probably closer to May. They are like, oh,
7 you are going to represent Academir in this case and so that
8 was pretty much it.

9 I knew that the incident had taken place the year
10 prior, but beyond me being involved in any of the litigation or
11 any of the going back and forth, I was not privy to that.

12 THE COURT: How much daily interaction or regular
13 interaction were you having with counsel representing the
14 school?

15 THE WITNESS: The only time I had the interaction was,
16 I think, literally the day before my deposition just to kind
17 of -- and it was via Zoom just to make sure that I was
18 prepared. I was actually home at the time with Covid very sick
19 but I was -- I went in for the deposition on that day, and I
20 had just met with Julie and her team the day before the
21 deposition.

22 THE COURT: Did there come a time when you were ever
23 asked to participate in a review of documents before your
24 deposition?

25 THE WITNESS: No.

1 THE COURT: Were you aware that there had been a
2 request for production of policies and procedures?

3 THE WITNESS: No.

4 BY MR. YOUNT:

5 Q. Okay. Let's take it past your deposition where you gave
6 testimony on behalf of your employer. Do you remember that?

7 A. Yes.

8 Q. And then you produced the documents?

9 A. Correct.

10 Q. Now, you later became aware that there was a challenge to
11 the authenticity of those documents.

12 Correct?

13 A. Correct.

14 Q. And we made some requests to you to try to produce original
15 computer files with metadata.

16 Do you know what metadata is and do you know how it works?

17 A. At the time, I did not know. For that reason, I had to go
18 to my boss and say, "Okay. I don't know what they're asking.
19 Can we call Habib?"

20 And my boss said, "Yes."

21 He said, "We are going to get Habib to come and get all the
22 data they need."

23 Q. At any time from the day before your deposition when you
24 first became aware that there was an issue with respect to
25 policies and procedures through today, have you ever modified

1 the policies and procedures and then represented them as being
2 something other than what they were?

3 A. No, sir.

4 Q. Okay. Have you falsified anything in connection with your
5 testimony or any documents in this case?

6 A. No, sir.

7 Q. All right. You have been accused of perjury. Have you
8 perjured yourself in this case?

9 A. No.

10 Q. Do you understand what that means?

11 A. Not really.

12 Q. Have you ever deliberately said anything false in
13 connection with this litigation when under oath?

14 A. No, sir.

15 Q. All right.

16 THE COURT: When is the first time that you ever dealt
17 with the policy binder that counsel is referring to?

18 THE WITNESS: When I first joined Academir, I was a
19 principal for six and a half years and I was promoted halfway
20 through the year. That first summer, one of my job
21 responsibilities was to kind of revamp all of the systems that
22 were in place, including handbooks, manuals, student handbooks,
23 employee handbooks, and policies.

24 So at that time when I was developing all of those
25 policies and working with my team, that was one of the items.

1 So, the first time I engaged with that particular policy in
2 handling the revisions was the summer of '22.

3 Prior to that, I was a principal, and we just followed
4 the district process and whatever was handed down to us from
5 management.

6 THE COURT: When did you ever see the binder, the
7 policies and procedures all in a binder like counsel showed
8 you?

9 THE WITNESS: So, we have tons of binders. My boss, in
10 particular, has to have everything in binders. I prefer
11 digital, but she doesn't. So, we have every single policy in
12 binders, and when I came there was a huge just binder of all
13 stuff together. And my job was really to kind of organize and
14 make it, you know, and improve the system. And every year we
15 have to just update and improve, whether it's the bylaws, the
16 parent/student handbooks, the faculty handbooks, the employee
17 handbooks.

18 All of the regulations now with the Marjory Stoneman
19 and the safety acts, those are all policies that have to be
20 adopted annually and revised or the board signed off on, yes,
21 we reviewed it, we're in agreeance and we submit it to the
22 district or the state regarding any compliance.

23 So, that's done annually. Things are changed and
24 improved. Every year as we continue to grow we can't run it
25 like a mom-and-pop show anymore. There are other, you know,

1 requirements that we have, so every year we improve the system.

2 I mean, as a result of this, we have improved our
3 policies for Title IX. Every year we have to come to the table
4 and improve systems.

5 This year, because of all of the safety issues and
6 concerns, not because of this case, just because of Marjorie
7 Stoneman and compliance, we have hired a director of safety and
8 security which is now overseeing Title IX, just because of the
9 magnitude of everything that we have learned through this
10 process and, obviously the process of, you know, school safety.

11 BY, MR. YOUNT:

12 Q. To be clear, the binder that I refer to, that's your
13 binder. Correct?

14 A. Yes.

15 Q. Do the individual principals also have binders with policy
16 manuals?

17 A. Every principal has a set of binders in their building, and
18 I can speak from experience because as a principal that's one
19 of the things I had to do.

20 The district comes in or the state comes in and you have to
21 present your binder, and you have to have your safety binder,
22 your policy binder, your data binder. All of those things have
23 to be tangible so they can review during their visits.

24 Q. My last question is, once you recognized that there were
25 accusations being made by the plaintiff's counsel about

1 doctoring records and fraud, did you offer them to come and
2 inspect the computers of your business?

3 A. Yes. I actually learned about that this summer. I not
4 only service Miami-Dade Schools, but I have a school in
5 Osceola, and at the time that they requested this I was running
6 a school in Osceola, opening it up, and I was there but that's
7 all I heard.

8 Nobody ever came to see me or to the office, not that I am
9 aware of.

10 Q. As far as you are aware of, the only person who has
11 forensically examined your computer and the computers of your
12 business --

13 A. Is Habib, yes. That is correct.

14 MR. YOUNT: Thank you, Your Honor.

15 That's all the questions I have of this witness.

16 THE COURT: Cross-examination.

17 MR. MACDONALD: Before I get into the questions, Your
18 Honor, I just want to point for clarification, the binder that
19 the defendants just alluded to a moment ago was not produced
20 until yesterday, last evening, and no similar binder has ever
21 been produced since litigation, despite discovery having closed
22 on August 29th.

23 MR. YOUNT: May I respond briefly because there is a
24 pattern --

25 THE COURT: Let him ask the questions. We will get

1 into that more in depth later.

2 You will have plenty of time for that.

3 CROSS-EXAMINATION

4 BY MR. MACDONALD:

5 Q. Good afternoon, Ms. Bernal.

6 A. Good afternoon.

7 Q. You testified you were the chief operating officer for the
8 defendants. Is that right?

9 A. That's correct.

10 Q. And you've been employed in that position since
11 approximately 2022. Is that right?

12 A. Yeah, February 2022.

13 Q. As chief operating officer, you have a role or you are
14 responsible, rather, for overseeing compliance with laws like
15 Title IX. Is that fair to say?

16 A. Yes.

17 Q. Now, you've claimed to be the Title IX coordinator for
18 Academir students since 2022, as well. Right?

19 A. Correct.

20 Q. Do you recall being deposed on May 9th, 2024, in this case?

21 A. Yes.

22 Q. During that deposition --

23 MR. YOUNT: Objection. It's improper impeachment.

24 THE COURT: Overruled.

25 BY MR. MACDONALD:

1 Q. You testified that Academir had written policies for
2 Title IX that were in place that were unique and separate from
3 Miami-Dade County public schools. Is that right?

4 A. That is not accurate.

5 Q. The entire testimony that I gave was that they were not
6 unique because our students are Miami-Dade County Public
7 students, and we have to follow the policies and procedures
8 with Miami-Dade, with the exception of certain contact
9 information and people that -- and steps that we have to follow
10 because we don't function under their Civil Rights Department.

11 We have our own contact. We don't use the Miami-Dade
12 County Public Schools police officers. We are not allowed to.
13 We have to go to the Miami-Dade County Public Schools with
14 regards to mandatory reporting, absolutely.

15 Any educator, whether you are a teacher or principal, or
16 school administrator, you have the duty, the obligation under
17 law to mandatory report any incident.

18 We have to call the police if in doubt of abuse or
19 negligence, a hundred percent.

20 If we have --

21 THE COURT: The question was do you have any policy
22 separate from the school district?

23 THE WITNESS: Our policies are, we follow the
24 Miami-Dade, but they have to be tailored to our organization
25 because the contact and some of the information that we have to

1 follow we can't follow the Miami-Dade because we are not a
2 Miami-Dade County Public Schools.

3 THE COURT: All right. Next question.

4 BY MR. MACDONALD:

5 Q. I just want to make sure I understand you correctly that
6 the school did, in fact, have separate and unique Title IX
7 policies from those of Miami-Dade County?

8 A. For our students we have to follow the Miami-Dade County
9 Schools.

10 Remember, these are students that belong to Miami-Dade and
11 the student code of conduct, the disciplinary process has to
12 follow those procedures.

13 THE COURT: This is not about that.

14 The question I believe had to do with Title IX policies
15 that the school maintained.

16 THE WITNESS: Yeah, we have them in place, and they're
17 unique to Academir Charter Schools under the preface for
18 students for Miami-Dade County.

19 BY MR. MACDONALD:

20 Q. You said you recall being deposed in this case.

21 Is that right?

22 A. That is correct.

23 Q. And do you recall in that deposition that you were placed
24 under oath?

25 A. Yes.

1 Q. And do you recall that you were required to tell the truth?

2 A. That is correct.

3 Q. Now, I want to direct the Court's attention to what should
4 be Exhibit 8 in the binder that I provided, and that is the
5 witness's deposition transcript, specifically page 47 and line
6 16.

7 Permission to approach, Your Honor.

8 (Plaintiff's Exhibit 8 was marked for identification.)

9 THE COURT: Yes.

10 BY MR. MACDONALD:

11 Q. Now, I am going to read from this page here, and I need you
12 to follow along.

13 THE COURT: Just give her a copy of the deposition and
14 then you can go or if you want to use the ELMO, that's fine
15 too.

16 MR. MACDONALD: Yeah, let's use the ELMO. That will
17 make it a little easier.

18 Thank you, Your Honor.

19 BY MR. MACDONALD:

20 Q. Now, Ms. Bernal, I just want to draw your attention to line
21 16 where it says:

22 "Question: And those policies and procedures are also
23 separate from the Miami-Dade County Schools policies?"

24 "Answer: That is correct."

25 Did I read that correctly?

1 A. You read that correctly.

2 Can I saying something? Can I reply?

3 THE COURT: Let him ask the question.

4 THE WITNESS: Okay. Okay.

5 BY MR. MACDONALD:

6 Q. So, let me ask you again, did Academir Charter Schools have
7 Title IX policies in place that were separate and distinct from
8 the Miami-Dade County Public Schools' policy?

9 A. As it relates to students, no.

10 The question, if you read above, says, "These procedures
11 are separate from the Academir employee handbook."

12 And you're referencing employee handbook. Remember, our
13 employees are Academir Academir employees. They are not
14 Miami-Dade County Public Schools' employee, so this question
15 and this response pertains to the question of the employee
16 handbook, not the student handbook or the policies that govern
17 our students.

18 That question, and if you keep reading a lot of the other
19 pages of the statements that I made throughout, I did reference
20 that we do follow the Miami-Dade County Public Schools for our
21 students.

22 Q. So, it's your testimony that the employees of Academir
23 Charter School have a separate and distinct Title IX policy,
24 separate from the county, but students do not?

25 A. Yes. We don't -- we follow the -- the Academir has -- in

1 our Title IX policy you have employees. You have vendors, and
2 have you students all in one handbook, so to speak.

3 The policies that we follow for students have to be
4 governed by the Dade County Public Schools, and, again, our
5 teachers and our employees do not belong to Miami-Dade County
6 Public Schools.

7 Q. Now, Ms. Bernal, do you recall testifying that the Title IX
8 policies at Academir existed before your involvement in your
9 position?

10 A. That is correct.

11 Q. And you could not testify about when those policies were
12 created or how they were created.

13 Is that right?

14 A. That is correct.

15 Q. And is that still the case today?

16 A. Before me moving to Superior Charter School Services
17 Offices, I don't know who initially created the policies.

18 I know that as a principal that was something that we had
19 to do on an annual basis because at the opening of schools,
20 that's one of the modules and presentations or trainings, so to
21 speak, for principals, given through Miami-Dade Public School
22 Charter Schools Office.

23 Q. You claim you made updates to that same policy in 2022. Is
24 that right?

25 A. I'm sorry, say that again.

1 Q. And you made updates to those same policies in 2022.

2 Is that right?

3 A. Yes.

4 Q. And you made those policies I believe with Xenia Mir and
5 Esther Mir?

6 A. So, there is a team of us. When we are -- and both Xenia
7 and Esther Mir are there because we are going over the student
8 handbooks, the employee handbooks. That summer we had to
9 revamp a lot of things.

10 THE COURT: When you revamp those policies, though, do
11 you have to run it by the districts, by the school?

12 THE WITNESS: No, when I -- what happens because,
13 again, under the auspices of the sponsoring school district
14 there are certain things that we have to do on our own, so I
15 usually write it up, draft it, present it to my team. They
16 have to review, make changes, tell me what needs to be edited
17 before we present it to the governing board, at which time the
18 governing board is presented with the policies and then they
19 make the approval or not and they sign off on it.

20 BY MR. MACDONALD:

21 Q. When you say the "government board," you're referring to
22 the board of directors for Academir?

23 A. We have to present these at any of the governing board
24 meetings, and particularly we work with Alexander Casas, which
25 is our governing board chair, for approvals.

1 Q. But there is no record of those policies ever having been
2 approved by the Academir board of directors. Isn't that right?

3 A. That particular year, if you reference back, we put general
4 policies and procedures. We were not specific about every
5 single policy that we approve.

6 Moving forward, I mean, and I know that we did this year
7 and last year, every year we improve. For me, this is a fairly
8 new position and I have to make sure now, if you go back to our
9 previous governing board meeting, all of these policies -- and
10 they are required now by the district.

11 Did you approve the mental health plan? Did you approve
12 the safety and security plan? Did you approve the X, Y, Z,
13 including the Title IX? You will see it's approved in the
14 governing board meeting and it states in the minutes.

15 Q. But there is no record in any year of those policies having
16 been approved by the board of Academir. Isn't that right?

17 A. That particular policy, the Title IX doesn't say Title IX
18 approval, no, until this fiscal school year.

19 Q. Now, previously you said that you edited those Title IX
20 policies.

21 At any point did you review the interrogatory responses for
22 Academir?

23 A. I'm sorry, repeat that. I'm not understanding.

24 Q. At any point did you get a chance to review the
25 interrogatory responses for the Defendant Academir?

1 Do you recall reviewing them in your deposition, for
2 example?

3 A. The situation that took place with the child, with Jane
4 Doe, is that what you are referring to?

5 THE COURT: No, written interrogatories signed on
6 behalf of your company, the school, legal interrogatory
7 answers?

8 THE WITNESS: No, I'm not aware.

9 THE COURT: What exhibit number are you using?

10 MR. MACDONALD: This has previously been marked as
11 Plaintiff's Exhibit 3 for identification.

12 (Plaintiff's Exhibit 3 was marked for identification.)

13 BY MR. MACDONALD:

14 Q. Can you see what I am showing?

15 A. I can.

16 Q. Do you recall seeing this document during your deposition?

17 A. I can't recall.

18 Q. Do you recall when you were asked about the response to
19 number 12 where you detailed -- or where Academir, rather,
20 detailed any changes that were made to the Title IX or sexual
21 harassment policies within the past five years?

22 A. Correct.

23 Q. And that response was inaccurate; wasn't it?

24 A. Can I read it?

25 Q. Yeah, of course you can.

1 Take your time.

2 A. The answer was just, "none." I don't know...

3 THE COURT: Well, first of all, is that correct, prior
4 to January 18 of 2024 had there been any changes made to the
5 Title IX or sexual harassment prevention policies within the
6 past five years?

7 The answer was none. Is that correct?

8 THE WITNESS: I didn't answer any of these questions.

9 BY MR. MACDONALD:

10 Q. But is that accurate?

11 A. You're asking -- I don't even know what the question -- I
12 want to be able to read what it says at the top and what is,
13 you know, in relation to this. You are asking me for something
14 for 2017. I joined the organization in 2015 as a principal.

15 Q. Okay. Well, what about for the time that you've been chief
16 operating officer, is it accurate to say that there have been
17 no changes to the Title IX policies of Academir Charter School?

18 A. At the time, the 2022, when I first joined, the minor
19 changes was who was going to be responsible for what.

20 Prior to that, we just had Xenia Mir, which was the person
21 in charge of HR, and that's who we would go to.

22 Beyond that year, then we changed minor things like who is
23 responsible for what.

24 When I came aboard, I became responsible for matters
25 related to student and parent complaints, and the dates they

1 have to be changed on a yearly basis, and it wasn't until it
2 2022 and 2023 when we started looking at all the changes in the
3 policy that needed to be adjusted and put in place, minor
4 changes.

5 THE COURT: So just then, the answer to question 12
6 that is none, is that answer correct or incorrect?

7 THE WITNESS: Minor changes. I can't say that there
8 weren't any changes because they had to have been minor changes
9 with the names and the dates of the year.

10 You have to change it. You can't leave a policy from
11 2021 or '17 in the current year, so they have to have been
12 changed. But substantial changes to the actual policy within
13 itself, no. The steps, no, that doesn't change.

14 BY MR. MACDONALD:

15 Q. Now, just a moment ago you said that you worked on those
16 policies with Esther Mir and Xenia Mir?

17 A. We worked on the policies. When I first joined the
18 organization that summer, we had to revise a lot of policies.
19 So, is everybody at the table, are we working to do things, you
20 know, together, who is going to be responsible. I just don't
21 put somebody's name without changes.

22 Q. Excuse me, Ms. Bernal, but those two individuals, Esther
23 Mir and Xenia Mir, did they participate with you in making the
24 changes to that policies?

25 A. I wrote the policies, and I -- well, I didn't write the

1 policies because they were already in place but I adjusted the
2 policies with everybody at the table including --

3 Q. And those individuals --

4 A. They were at the --

5 THE COURT REPORTER: I'm sorry. I can't take both of
6 you at the same time.

7 THE COURT: You need to let him finish the question.

8 THE WITNESS: I'm sorry.

9 THE COURT: Answer his question.

10 The question was, were those two individuals that he
11 identified part of the table as you're referring?

12 THE WITNESS: Yes.

13 THE COURT: Okay.

14 BY MR. MACDONALD:

15 Q. And you previously told the Court that Esther Mir was the
16 point of contact for this litigation.

17 Isn't that right?

18 A. For this particular case, Rolando Mir was, her husband, so
19 Esther and Rolando Mir, which are my boss, yes.

20 Q. And she was there in 2022 when you made these edits to this
21 Title IX Policies?

22 A. That's correct.

23 Q. But those policies were never produced or disclosed until
24 your deposition. Is that right?

25 A. Nobody told me I had to turn anything over until the

1 deposition with you when you asked me for several documents,
2 which was that, the Title IX policies. You also asked me for
3 the student statement form and you also asked me for the
4 complaint form that I was referring to in my deposition, and
5 that's what I provided and I turned over.

6 Q. Now, that complaint form that you mentioned, do you recall
7 telling me in your deposition that Academir had future plans to
8 make that Title IX complaint form an online accessible form?

9 A. We did have the online accessible form. We had a Google
10 form, which I gave your team access to, and that was actually
11 forwarded in an e-mail into an August 10th, 2022, to both Xenia
12 and Ms. Mir.

13 And if you look online we have updated the form completely
14 and it's a different -- it's a more user-friendly form online.

15 Q. You are referring to the online Google form that was
16 produced after your deposition.

17 Is that right?

18 A. That you asked me for, that is correct.

19 Q. But during your deposition, did you state that it was a
20 future plan to make that form an online-accessible web form
21 that had not been done yet?

22 A. I cannot recall, but I also provided you with the e-mail
23 that in 2022 that form was forwarded to both Xenia and Ms. Mir.

24 Q. Okay. I'd like to direct the Court's attention to the
25 witness's deposition transcript, and this is page 53, beginning

1 on line 18.

2 Can you see what I'm showing you?

3 A. Yeah.

4 Q. Do you see where it says starting with:

5 "Question: And the form was made electronic this year, you
6 said?"

7 "Answer: We're going to make it electronic."

8 "Question: What have you done in regards to preparing the
9 form electronic."

10 "Answer: I haven't started. We have the hard copy of it.
11 We have a form, but to make it, we just convert it and make it
12 accessible as link --" and the beginning of the next page, "to
13 all of our staff and we put it on the websites."

14 "Question: You have already put it on the websites or
15 that's your future plan?"

16 "Answer: No, that's for this fiscal year. We've discussed
17 it."

18 A. And that is correct. At the time that we had that
19 conversation they were not accessible online. They were not.
20 If you go on, now you are going to see that they are a digital
21 easy-to-use format online, but at the time that we had that
22 conversation, no.

23 Had the Google form been created in 2022? Absolutely.

24 Q. But you produced that Google online form less than two
25 weeks after your deposition.

1 Is that right?

2 A. No, that was done August 10th, 2022, of which we had
3 evidence, and we forwarded to you and your team and the
4 attorneys that that form was created. That e-mail was sent to
5 Ms. Mir and to Xenia back on August 10th, 2022, which was our
6 first draft.

7 The form that you currently see online is a completely
8 different form because the Google Docs that was created was
9 not -- every time that somebody requested -- you had to give
10 them access, in essence, and the responses were never coming
11 back to us.

12 So, we had to revamp that entire form. It was done over
13 the summer, and now you have a different format altogether, and
14 that's what I was referring there and on my statement.

15 Q. What you were referring to a moment ago in August, you were
16 referring to an e-mail exchange with another individual.
17 Correct?

18 A. With both Esther Mir and Xenia Yamir.

19 Q. Not the form itself. Correct?

20 A. No, the form was attached to that e-mail and the link to
21 Google Docs was also produced in that previous e-mail from
22 August 2022.

23 Q. That's not what I am asking you about.

24 I'm asking you about after your deposition a copy of the
25 Title IX form and a Google web form was produced less than two

1 weeks after your deposition.

2 Are you aware of that?

3 A. Well, we had to download it to send you as evidence that
4 that was there as well. And then you had the hard copy, which
5 was also produced there.

6 We had the paper copy, which is what I turned over. The
7 paper copy, the policies and the statement that you requested
8 during my deposition you asked me for those documents, which is
9 what I combined and forwarded to my boss.

10 Q. So, how is it possible that it was just a future plan to
11 create this Title IX complaint form into a future web form and
12 less than two weeks later you produced that same form?

13 How is that possible?

14 A. You are confusing the matter because in 2022 that form was
15 already in place, but it was a none -- it wasn't -- it wasn't
16 the best template to use for this process of which we had to
17 revamp the actual form so that it would send us back
18 notification, somebody submitted this, please -- now we get the
19 alerts if somebody submits, and we've done it because we tested
20 it, to send it back to us.

21 The previous document, we would have to go back every
22 single week to check to see if somebody submitted something.

23 Q. You said this Google form existed in 2022?

24 A. That is correct.

25 Q. Then why in this aspect of the deposition transcript that

1 we just read did you say that we are going to make it?

2 A. Because it wasn't published on the websites like I said
3 there. It was nowhere -- it was a Google form that we created,
4 but it wasn't published on the school websites.

5 If you go now, the Google form is not there, nor the Google
6 form was -- it was there, but it wasn't being utilized
7 effectively.

8 THE COURT: When you say it was "there," what does that
9 mean?

10 THE WITNESS: It was created, and if the parent needed
11 to submit something, then we would have them complete the form
12 there, but it's not something that was accessible and open to
13 the public of like what we have now, which is they just go to
14 the website, click on it, and it takes take them to just a
15 regular form, not a Google form.

16 BY MR. MACDONALD:

17 Q. Now, do you recall testifying that you've conducted more
18 than five Title IX investigations during the time you've held
19 the title of chief operating officer?

20 A. I didn't say Title IX. I said sexual investigations or
21 allegations, something minor, and I remember I told you that it
22 was literally just one that ended up with, really, nothing
23 because it was a first grader and it was unfounded. The police
24 couldn't do an investigation because it happened months prior
25 and it was something, you know, that the police determined

1 there is really no evidence of anything.

2 But a Title IX, and I recall telling you that as well
3 because I read all of my statements, and I did not say -- I
4 said, you know, there may be something that they complain about
5 but it hasn't been a Title IX, Title IX investigation.

6 Q. So, I am not understanding your testimony here today.

7 Did you testify that you conducted more than five Title IX
8 investigations?

9 A. I did not say that I conducted five. If I might have said
10 it, I might have said it out of context, but, you know, they
11 can say -- they can make an allegation, but it doesn't become a
12 Title IX until it's, you know, actually an investigation that
13 is conducted.

14 Q. I'd like to draw the Court's attention to the witness's
15 deposition transcript, and this is page 124, beginning on line
16 20.

17 Can you see what I'm showing, Ms. Bernal?

18 A. Yes.

19 MR. YOUNT: What page?

20 MR. MACDONALD: Sorry, Your Honor, 124 is the page.

21 BY MR. MACDONALD:

22 Q. "Question: How many Title IX investigations have you and
23 your team handled in your tenure?"

24 "Answer: I cannot recall. I don't have a specific number
25 in my head. I don't have that information. I wasn't told I

1 had to bring that."

2 "Question: Well, you didn't have to bring anything. I am
3 asking you if you recall ever conducting a Title IX?"

4 "Answer: I don't recall -- I do recall, but I don't recall
5 the number of times I have done them."

6 "Question: Was it more than once?"

7 "Answer: Yes.

8 "Question: Was it more than five times?"

9 "Answer: Yes."

10 A. Can you continue reading because the context also tells
11 you, really, in all honestly there was one, and I explained all
12 of the different procedures. And I recall the specific one
13 that we discussed which happened in Academir Charter School
14 East with a first grader.

15 Q. So, as you sit here today, is it your testimony that you
16 have not conducted more than five Title IX investigations?

17 A. That is correct.

18 Q. In your tenure as chief operating officer have you ever
19 conducted a Title IX investigation?

20 MR. YOUNT: Your Honor, object to relevancy. We are
21 here to talk about document forgery and fraud and perjury, and
22 this has nothing to do with documents.

23 MR. MACDONALD: Your Honor, I highly disagree. I would
24 say this has a lot to do with perjury given that Ms. Bernal was
25 under oath and I'm trying to clarify the truthfulness of her

1 testimony here.

2 THE COURT: But it's got to be relevant to the
3 discovery issue that you raised.

4 MR. MACDONALD: Sure.

5 THE COURT: Some of this may be overlapping at the
6 trial, I get that, but if it doesn't relate to the discovery
7 issue directly, you will just have to hold it.

8 MR. MACDONALD: Understood. I'll move on, Your Honor.

9 BY MR. MACDONALD:

10 Q. Now, Ms. Bernal, do you recall at one point during your
11 deposition you were reading from a document?

12 A. That is correct.

13 Q. When you were asked the title of the document that you were
14 reading from, do you recall stating that it was titled, quote,
15 "fiscal policies and procedures"?

16 A. Correct.

17 Q. But when you were asked to show the document that you were
18 reading from to the camera because your deposition was
19 connected via Zoom?

20 A. Yes.

21 Q. You did not show the Fiscal Policies and Procedures
22 document that you described, did you?

23 A. What I showed was the Miami-Dade County Public Schools
24 policy for students. Correct?

25 Q. So, it wasn't true when you testified that you were reading

1 from a document titled Fiscal Policies and Procedures, was it?

2 A. In the binder you have Fiscal Policies and Procedures and
3 all under -- after that you have all of the policies.

4 If you can look at my binder today, the first one there is
5 Fiscal Policies and Procedures and all of the other policies
6 proceed.

7 Q. But that's not what you had in front of you that day, was
8 it?

9 A. That day, again, coming from Covid, just came in to do my
10 testimony, whatever I had available in my office, one was,
11 obviously, the binder with the fiscal policies, and there in
12 that one form I had the Miami-Dade one, and that's what I was
13 reading because we follow their procedures with the exception
14 of the contact information which is also what I shared with you
15 during my deposition.

16 Q. Now, you testified that the Title IX policies for Academir
17 were compliance binders at each school with the principal. Is
18 that right?

19 A. That is correct.

20 Q. And at one point you stated that the school principal, the
21 principal for which Jane attended that respective school
22 location, Ms. Susie Bello, that she actually helped collect
23 documents for this case. Is that right?

24 A. The school is the only one that collected all documents.

25 I don't have access to student personal records or academic

1 records. They are the ones that collect the documentation.

2 Q. I asked you, did Ms. Susie Bello help gather the documents
3 for this case in response to a discovery request?

4 A. That is correct.

5 Q. That same Susie Bello, per your testimony, had the Title IX
6 policy in the compliance binders. Isn't that right?

7 A. Yes.

8 Q. But they were not produced in response to that discovery
9 request, were they?

10 A. I don't know what was requested of Ms. Bello.

11 Q. How do you know that Ms. Bello assisted with gathering
12 documents for the case?

13 A. Because she is the principal in charge of the school and
14 the only one that can pull those records is Ms. Bello. She can
15 go into the cumulative records, the online system for student
16 information, and I wouldn't ask anybody else but the principal,
17 if it were my responsibility to ask her to produce something.

18 Q. Now, do you recall producing the document for 2022 to 2023,
19 the Title IX Policies and Procedures Handbook for Academir?

20 A. Yes.

21 Q. And you'd agree this that document is separate and distinct
22 from Miami-Dade County Public Schools.

23 Right?

24 A. That is correct.

25 Q. Now, isn't it true that that document specifically was

1 never published online anywhere?

2 A. That was in the possession of the teachers -- not the
3 teachers, sorry, the school administrators.

4 Q. And that document was also never distributed to students,
5 was it?

6 A. No, nor is it anywhere in Miami-Dade County. They just
7 have it on their websites, and they have the non-discrimination
8 policies, which they all have included in their Student Code of
9 Conduct. They also have it in their parent and student
10 handbooks, at the end of the handbook, all of the
11 non-discrimination policies, including Title IX is located
12 there.

13 Q. But that specific document that I'm referring to?

14 A. No, sir, and that wouldn't be something that I would
15 distribute to families unless they requested --

16 Q. Not to students?

17 A. And not to students, no. These are kindergarten students.
18 I can't give any policy --

19 Q. Any policy?

20 A. We don't give any of our policies to our students, no, sir.

21 Q. You don't give the Title IX policy to any students?

22 A. No, we do not.

23 Q. How?

24 A. They are available either online or if they have a concern
25 at that point then we would provide the guidance to parents and

1 the forms that they need to complete in order to submit a
2 request or a complaint, but I wouldn't give them the handbook
3 that we give to our staff or not our staff but our principals,
4 they wouldn't receive that.

5 I wouldn't give them any of our policies, the mental health
6 plan, the FSAT. None of our policies are given to students.
7 That's not something we give. We are there to educate students
8 and provide them with their educational, you know,
9 opportunities with regards to curriculum, not policies and
10 procedures.

11 Q. Okay. And that document specifically was never distributed
12 to students?

13 A. No, sir.

14 Q. You also said there is no record of those policies ever
15 being approved by the board of directors for Academir either.
16 Is that right?

17 A. The policies on the record are on the -- not the handbook,
18 the meeting notes, so to speak, and the agenda which say
19 approval of parole policies.

20 It doesn't specifically say approval of Title IX policies
21 or any, you know, specific, you know, to some of our policies,
22 like unless it's something that we need by mandate with regards
23 to the bylaws were updated and need formal signature, other
24 than that we just say general policies.

25 Moving forward this fiscal year we added the names of

1 everything that we approve.

2 Q. Okay. For that document specifically, the 2022 to 2023
3 Title IX policies, did it exist anywhere besides your computer?

4 A. They were in the binder. That's where they exist. It
5 wasn't in the notes for the governing board meeting minutes,
6 specifically with Title IX, I do not recall. No.

7 Q. So you are not aware of any other locations in which it
8 existed except your --

9 A. No, and that of the principal's. At the beginning of the
10 year when we approve all the policies, they get a copy. So,
11 all of the approved policies should be in the binder at every
12 single campus because those are the policies that they have to
13 abide by.

14 Q. You never produced that binder that you're describing
15 either in this litigation, did you?

16 A. Nobody asked me for it. You asked me for the policies.
17 You didn't ask me for a binder. I provided the policies that
18 were created. I provided the student statement form that I
19 mentioned and the formal complaint form.

20 Those were the things that were asked of me during my
21 deposition, and that is what I produced. Nobody said, give me
22 your binder.

23 Now, if they asked Ms. Bello for her binder, I believe that
24 Bello provided that, whatever was in the binder. And if you
25 would have said, Bernal, I need your entire binder, you would

1 have received what I provided the attorneys yesterday.

2 When they said, do you have a binder, I said absolutely.

3 They made copies of everything that was in that binder which

4 was produced to you yesterday.

5 Nobody asked me for a binder prior to yesterday.

6 Q. So, it had not been produced prior to yesterday. Correct?

7 A. That particular binder when they asked for it, no.

8 Q. Any binder?

9 A. I'm not aware of Ms. Bello. I'm sure Ms. Bello provided
10 you with a binder, with the covers. I remember the covers and
11 the e-mail going back and forth, absolutely, and I know that
12 she did provide you a copy of the binder that she had in her
13 possession.

14 Q. Now, when the issues came up relating to the authenticity
15 of the Title IX documents, do you recall testifying about that
16 previously?

17 A. That is correct.

18 Q. At one point you took screenshots of the document
19 properties for the 2022 to 2023 Title IX Policies and
20 Procedures.

21 Is that correct?

22 A. I did not take screenshots.

23 Mr. Habib took screenshots, collated all of the information
24 that you needed. I did not touch that because I didn't even
25 know what you guys were asking. So, we called the specialist,

1 IT, to handle that and he was able to take all of the
2 screenshots of all of the documentation that you guys were
3 requesting.

4 Q. Did you ever look at the document characteristics for those
5 screen screenshots, like the line count, the character count,
6 things like that in the screenshots you took?

7 A. Whatever he provided to us that day.

8 Q. So, you did review them or you did not review them?

9 A. Yeah. I didn't sit there and analyze everything, but it
10 was produced. It was there, so that is what we have. And that
11 is when what I have in just some the evidence documents that I
12 have or folders, just to keep everything with regards to the
13 case.

14 Q. Are you aware that the characteristics of the line count,
15 character count, those items that are included in the images
16 you produced do not match a single document that was produced
17 in this litigation?

18 A. No, I am not aware of that.

19 Q. You are just learning that now?

20 A. So, one of the -- I know that they mentioned yesterday the
21 difference, the only difference that I can attest to is that
22 when you guys requested it, I merged the documents that you
23 wanted and I forwarded it to my boss.

24 So, instead of it being just that one document, I added the
25 form, the completion -- the request form and the student's

1 statement form, and that's what I turned over. So, I merged
2 the document to submit it to you guys. That would be the only
3 word count change in the submission where before it was just a
4 single form and then I turned over everything that you
5 requested in one form, one document.

6 Q. Those revisions that you just described a moment ago that
7 may have led to those discrepancies, did you ever produce that
8 revised document?

9 A. What do you mean the revised document?

10 The PDF form I gave you guys with all of the documents?

11 Q. Just a moment ago when I asked you about those
12 discrepancies and what may have explained it, you alluded to
13 some kind of editing that was done.

14 A. There was no editing done. All I did was just merge the
15 documents to submit them. But did I edit the actual document?
16 There was no reason to. I added the other two documents that
17 you questioned me on and you asked me to submit so I turned
18 that all together to you, not you but my boss to turn over to
19 the attorneys.

20 Q. Did you turn over that merged file that you described?

21 A. I did. I sent everything in.

22 Q. What was that document called that you turned over?

23 A. Title IX policies.

24 Q. Are you aware that those characteristics that I just
25 described, the character count line, did not match any of the

1 documents that were produced, including those merged documents
2 if they were produced.

3 Do you have any explanation as to that?

4 A. I am not a specialist, I do not know.

5 MR. YOUNT: Objection. He is trying to testify to
6 facts that aren't true.

7 THE COURT: Sustained as to the form of the question.

8 MR. MACDONALD: I will move on.

9 BY MR. MACDONALD:

10 Q. Now, given the discrepancies in the documents and the
11 statements that we just went over in regards to the
12 investigations and the revisions that were made to the
13 policies, do you have any credible explanation as to why those
14 items are so different from what you have testified to?

15 A. What I do know is that the screenshot of one of the items
16 says the first original document was produced August 10th,
17 2022. When you make the annual changes year to year, whatever
18 is saved is saved and whatever is added.

19 So, if you look at this year's documents, not only do I
20 have the statement form, I have the statement form for
21 teachers, for students, for vendors and other. I have the
22 complaint form. I have the digital form. I have the parent
23 consent form. I have the non-student consent form. So every
24 year it just continues to grow because it changes. Every year
25 that we learn something new we have to adjust and amend and you

1 will see that there are tons of other documents.

2 So, if you look at the metadata I'm assuming now for the
3 original document that was created it's not going to match. It
4 can't, because every year you learn and get from this
5 experience. I am, by no means, a Title IX, and I never claimed
6 to be a Title IX expert. Do I have to ensure -- now this year
7 I'm not even a Title IX coordinator anymore.

8 You know, the Title IX was something that I had to do
9 because of default I'm working with the schools, but I have
10 never claimed to be a Title IX coordinator. Again, but every
11 year we continue to grow and expand and improve our systems.
12 It's not something I'm lying. I have no stakes. There is
13 nothing that I have to lie about. We just have to ensure that
14 our students are safe and that we do everything in our power to
15 make adjustments to improve the system.

16 Q. Ms. Bernal, did you just testify a moment ago that you were
17 not the Title IX coordinator?

18 A. I am no longer the Title IX coordinator, sir.

19 Q. But you were a Title IX --

20 A. At the time, yes, I was, and I am no longer the Title IX
21 coordinator. That is correct.

22 Q. And you'd agree that gives you some expertise in Title IX,
23 I imagine. Right?

24 A. I am not by any way, shape or form the Title IX specialist.
25 I am not. That is not something I practiced all my career. I

1 am an educator. That was just another additional
2 responsibility that was added, but I am not an expert and nor
3 do I claim to be because I truly honestly am not.

4 Q. You didn't have any special responsibilities as the
5 Title IX coordinator for the school?

6 MR. YOUNT: Objection. Relevance.

7 THE COURT: Sustained.

8 THE WITNESS: I don't know what special --

9 THE COURT: Sustained.

10 THE WITNESS: Okay. Sorry.

11 THE COURT: Any further questions on the discovery
12 issue?

13 MR. MACDONALD: That's all I have at this time, Your
14 Honor.

15 Thank you, Ms. Bernal for your time.

16 THE COURT: Any redirect?

17 MR. YOUNT: No more questions, Your Honor. Thank you.

18 THE COURT: Thank you. You may step down.

19 Back to the plaintiff, did you want to call any witness
20 on the plaintiff side?

21 MR. MACDONALD: Yes, Your Honor.

22 We are going to call Jim Stafford to the stand.

23 COURTROOM DEPUTY: Please raise your right hand.

24 (The witness, Jim Stafford, was duly sworn.)

25 COURTROOM DEPUTY: Thank you, sir, please have a seat

1 and state and spell your name for the record.

2 THE WITNESS: My name is James Lee Stafford, J-A-M-E-S,
3 L-E-E, S-T-A-F-F-O-R-D.

4 THE COURT: Thank you.

5 DIRECTION EXAMINATION

6 BY MR. MACDONALD:

7 Q. Good afternoon, Mr. Stafford.

8 A. Good afternoon.

9 Q. Could you please state your name and profession for the
10 Court?

11 A. I am James Lee Stafford. I am a forensic examiner for
12 Eclipse Forensics, which is a d/b/a of Eclipse Recording
13 Company, a company I own.

14 Q. Could you briefly describe your qualifications and
15 experience in digital forensics?

16 A. I have many certifications. I am an AccessData-certified
17 examiner and certified investigator.

18 I have probably 20 other certifications from different
19 digital forensic platforms, Oxygen, others from AccessData.

20 MR. YOUNT: Your Honor, to the extent he is being
21 proffered as an expert in the field of computer forensics, we
22 don't object.

23 THE COURT: Okay.

24 BY MR. MACDONALD:

25 Q. Did you perform a forensic analysis related to electronic

1 files in this case?

2 A. I did.

3 Q. Can you describe the work that you performed in analyzing
4 those files?

5 A. Yes. It was to look at the metadata on the files that were
6 provided and compare them to -- there was a document that had
7 three screenshots on it, and it was to see whether or not any
8 of the files that were presented for my examination were
9 created prior to May 9th, and if any of these files matched the
10 metadata on the file from the screenshots.

11 Q. What tools did you use to analyze those files?

12 A. There were Word DOCX. There were PDFs, and there was an
13 image file. I used Microsoft Word to open the Word DOCX. I
14 used Adobe Acrobat, of course, to open the PDFs, and then File
15 Viewer Plus Pro for analyzing the images.

16 But File Viewer also has a very detailed file info
17 function, which allows you to see metadata, a lot more metadata
18 that you get than just by right clicking and looking at file
19 properties.

20 Q. At the time you completed your analysis, did you complete a
21 report with your findings?

22 A. I did.

23 Q. Was that report created to accurately reflect your
24 observations and findings at the time you did the analysis?

25 A. Yes, it was.

1 Q. Mr. Stafford, do you recall all the details of the report
2 that you generated?

3 A. I recall all the salient details. There were numbers in
4 there. I don't recall the numbers, per se.

5 Q. Now, can you describe the purpose of your investigation or
6 analysis?

7 A. Yes. Well, what I was asked to do was to compare those
8 documents that were presented to the, once again, the three
9 screenshots that represented a file that was created on
10 August 10th of 2022.

11 There were a number of characteristics that were shown in
12 the file data that was in those screenshots, and so I was
13 comparing the metadata that I observed from the documents that
14 were presented, the newer documents, and then to see if any of
15 them were created prior to May 9th.

16 Q. What were your findings in regards to those two aspects
17 that you looked into, the creation date, and the images that
18 you looked at?

19 A. Well, none of the documents that were presented were
20 created before May 9th. There were some in May. There were
21 some in June that had creation dates, but the interesting thing
22 was is that the file that was -- showed the three screenshots
23 that refers to that policies and procedures, you know, the
24 Title IX Policies and Procedures that showed an origin date of
25 August 10th, 2022, also showed that its content had been

1 modified on May 9th, at 6:47 in the evening and that
2 modifications took a period of five hours and that the modifier
3 was Olivia Bernal on her computer.

4 Q. So, if I understood you correctly, the documents that you
5 looked at, did any of them support a creation date before
6 May 9th, 2024?

7 A. They did not.

8 THE COURT: How can you tell that from a screenshot,
9 though?

10 THE WITNESS: I'm sorry?

11 THE COURT: How can you tell that from a screenshot of
12 a document?

13 THE WITNESS: The screenshot she provided showed the
14 creation date and showed modified date.

15 THE COURT: Oh, I see. In other words, the screenshot
16 was also a metadata?

17 THE WITNESS: Yes, it had metadata on it. Yes.

18 THE COURT: Oh, I see.

19 MR. MACDONALD: I have an exhibit to show the Court.

20 THE WITNESS: Yeah, I'm sorry. It was not an
21 examination of the metadata of the screenshot. It was what was
22 actually printed on the caption.

23 THE COURT: Oh, I see.

24 BY MR. MACDONALD:

25 Q. And you also compared the properties in those images to the

1 actual PDF and Word document files that you received. Is that
2 correct?

3 A. Yes, I did.

4 Q. Did any of the files you received, whether PDF or a
5 document, did any of them match those images?

6 A. They did not.

7 Q. What is the significance of that discrepancy?

8 A. Well, you know, you had Word count. You had a character
9 count. You had a paragraph count, you had pages, obviously,
10 file size, that are all different.

11 So, what that means is that the files that were presented
12 are not the file that is represented in the screenshot.

13 MR. MACDONALD: Okay. Now, I'd like to show what's
14 been premarked as Plaintiff's Exhibit 10 for identification.

15 (Plaintiff's Exhibit 10 was marked for identification.)

16 BY MR. MACDONALD:

17 Q. When you were referring to the images a moment ago,
18 Mr. Stafford, does this appear to be the document?

19 A. It's the one that's underneath, that has the three
20 screenshots, but the one on top is referring to the same
21 document. You see what it says there is -- if you pull it into
22 the screen just a little further, you will see that it shows
23 that this is the Title IX Policies and Procedures. The subject
24 was 2023, 2024, and it says revision number two. It shows the
25 content was created on May 9th, 2024, at 6:47, and that was the

1 last time it was saved. It also shows a total editing time of
2 five hours.

3 Q. So, if I understood you correctly, you compared those
4 characteristics shown in that image right there on the
5 character count line count, and it appears to be on the
6 left-hand side as well, you compared those to the actual
7 electronic files?

8 A. I did, yes.

9 Q. That's what you were referring to when you said that they
10 don't?

11 A. That's right.

12 Q. In your expert opinion, do the properties shown in those
13 images belong to a document that you did not review?

14 A. They do.

15 Q. How did you reach that opinion?

16 A. Well, the metadata is very different. When you modify
17 something, you can modify it by changing its content or you can
18 modify it simply by changing its name. So, the modified is
19 when it was last changed, but the creation date can also be
20 something that -- like if you send me a file and I save it to
21 my computer, it will have a new creation date, but the modified
22 date will still be whenever it was last changed.

23 Q. And in your expert opinion, could any of those
24 discrepancies be caused by routine file handling like e-mailing
25 a file or saving it to a hard drive?

1 A. No. Saving it to a hard drive will give you a new creation
2 date, but it won't change the modified date, and as far as
3 being able to just do exchange files, no, it wouldn't do that.

4 Q. As you sit here today, Mr. Stafford, do you stand by your
5 report and your analysis and the conclusions that you reached
6 in it?

7 A. I do.

8 MR. MACDONALD: Thank you.

9 No further questions for the witness at this time.

10 THE COURT: Cross-examination.

11 MR. YOUNT: May I proceed?

12 Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. YOUNT:

15 Q. Good afternoon, Mr. Stafford.

16 A. Good afternoon, Mr. Yount. Good to see you again.

17 Q. We had the pleasure of meeting that week just prior to
18 getting the note that we had to come to court here.

19 A. We did.

20 Q. At that deposition, Mr. MacDonald represented to everyone
21 that he was your attorney and was invoking the attorney-client
22 privilege with respect to my request for you to produce
23 information. Is that correct?

24 A. I don't recall specifically. He is not my attorney.

25 Q. Okay. But you do recall that he said, and he filed

1 paperwork saying that he was invoking the attorney-client
2 privilege and telling you not to produce documents?

3 MR. MACDONALD: Objection, Your Honor. He is referring
4 to work-product privilege, which is covered under Rule 26.

5 THE WITNESS: I don't recall that specific question. I
6 know there was some back and forth between the two of you.

7 BY MR. MACDONALD:

8 Q. Okay. You were served a subpoena before your deposition.

9 Is that correct?

10 A. I was.

11 Q. One of the things that was requested that you produced was
12 your file. Correct?

13 A. That's correct.

14 Q. And your file would have included the electronic PDFs, the
15 electronic Word documents and everything else that you had
16 concerning this case.

17 Is that correct?

18 A. Yes, including scans of my notes.

19 Q. And you refused to produce those documents?

20 A. No, that's not true. I gave them to a Mr. Milano.

21 Q. Did you bring it to the deposition and show them to me at
22 the deposition?

23 A. No.

24 Q. So, you did not produce them at the deposition as commanded
25 by the subpoena.

1 Is that correct?

2 A. Mr. MacDonald told me not to.

3 MR. MACDONALD: Objection. I'm going to instruct him
4 not to say anything that would be privileged of our
5 communication. Of course, if it relates to your report or your
6 findings or any facts that you relied on, you can answer that
7 question.

8 THE COURT: But you said that you weren't his lawyer,
9 though.

10 MR. MACDONALD: So, when I was referring to the
11 privilege in the deposition I was referring just to
12 work-product privilege with him as the expert, not as his
13 personal attorney, which is the distinction that they are
14 missing. I'm not his personal attorney.

15 THE COURT: But you can't invoke privilege then.
16 Right?

17 In other words, you can't invoke a privilege as to what
18 you told him with respect to his file, for instance.

19 MR. MACDONALD: Right. Right. I don't dispute that.

20 THE COURT: Isn't that the question?

21 What was the question?

22 MR. YOUNT: That was the question. To be clear, he did
23 claim that he was Mr. Stafford's attorney until Mr. Stafford
24 said he wasn't and he instructed him not to produce his file.
25 So, I don't have the guy's file, including the electronic --

1 THE COURT: What was your last question to keep it
2 simple?

3 BY MR. YOUNT:

4 Q. He told you not to produce and you did, in fact, produce
5 those documents?

6 THE COURT: You can answer that question.

7 A. I did produce the documents. I gave them to Mr. MacDonald.
8 At the time that I received the subpoena for deposition I
9 produced all the documents and gave them to him.

10 BY MR. YOUNT:

11 Q. But you didn't produce them at the deposition when I was
12 asking you questions that would have been helpful for me to
13 examine you on?

14 A. I defer to Mr. MacDonald. He is the one that said not to
15 respond to that.

16 Q. Okay. Very good.

17 Let's talk about some of the work that you did in this
18 case.

19 Conceptually, you would agree that every time you take an
20 electronic file from one computer and put it on a flash drive
21 there runs a risk of the metadata changing?

22 A. No.

23 Q. No?

24 What about when you take that flash drive and you plug it
25 into another computer with a different operating system?

1 A. When you talk about metadata, metadata is an awful lot of
2 data about whatever the file is. What can change is the create
3 date. There is nothing as you move something from one thing to
4 another that's going to change the background metadata. It's
5 not going to change line counts. It's not going to change file
6 size but -- and it won't change the modified date for the file.

7 Q. But it will change the create date?

8 A. If you save it to a new computer, yes.

9 Q. Okay. Depending on the type of file system that you're
10 changing the file from to the other, you could lose all of the
11 metadata. Is that correct?

12 A. I don't believe so.

13 Q. You don't believe so?

14 A. Can you explain that question? I have never been asked
15 that before.

16 Q. You are the expert.

17 A. Can you repeat it, please?

18 Q. I don't remember what it was.

19 A. Okay.

20 Q. At least you will agree that the create date can change no
21 matter whether you e-mail the file, put it on a flash drive,
22 upload it, download it, that can all change the create date?

23 A. The create date is not going to change when you put it in
24 an e-mail. The create date will change when you put it in your
25 computer.

1 Q. Are you familiar with Microsoft One Drive?

2 A. I am.

3 Q. Does One Drive have an automatic backup on it?

4 A. If you have it set for that, yes.

5 Q. How does that affect the metadata?

6 A. The backup? It's not going to change or modify dates.

7 Q. Is it going to change any of the dates on the metadata?

8 THE COURT: From the original file you mean?

9 MR. YOUNT: Yes.

10 THE WITNESS: The original file, none of the metadata
11 is going to change.

12 When you save to a new location, then the create date
13 can change.

14 BY MR. YOUNT:

15 Q. Now, you talked about this time period where there was a
16 five-hour window when presumably something was happening.

17 Do you know what was happening with this document during
18 this five-hour window that you are testifying about?

19 A. I do not.

20 Q. You would agree that the best way to determine whether a
21 document that you receive as an expert is the document that it
22 purports to be by the person who created it, would be to go
23 look at their computer system.

24 Is that correct?

25 A. Imaging the hard drive of their computer will give me a

1 more complete view.

2 Q. Okay. So, that would be the best way to know whether there
3 was a document fraud or perjury going on in this case. Is that
4 right?

5 A. It would be helpful.

6 Q. Did you -- you told Mr. MacDonald in the course of your
7 work that that's the best thing to do and that's what you
8 wanted to do?

9 A. No.

10 Q. You didn't?

11 A. No.

12 Q. Did you tell him that that would give him better
13 information?

14 A. No.

15 Q. Why didn't you tell him that?

16 A. Because, what I was asked to do was to compare the
17 documents that I received with the images that showed the
18 August 10th, 2022, file. And I was asked to see if any of
19 these show a create date or modified date for that matter prior
20 to May 9th.

21 So, the question never came up as far as going to the
22 computer. My experience, though, just as an aside, is that
23 normally that is resisted, so it wasn't something I thought of
24 asking.

25 Q. Not in this case it wasn't, because we offered.

1 A. I was not aware of that.

2 Q. And you also understood that your opinion and your
3 testimony here today was a hearing where Mr. MacDonald is
4 accusing my client and Ms. Bernal of fraud and perjury. Right?

5 A. Actually, I didn't know that until the deposition because
6 you asked me if I had an opinion on that and I said I do not.

7 Q. So, you have no opinion as to whether or not Ms. Bernal
8 committed fraud. Right?

9 A. I do not know the nature of this case.

10 Q. In fact, the date that you say that there was no document
11 created by a particular date, what was that date that no
12 document you saw was created before that date?

13 A. May 9th.

14 Q. May 9th of what year?

15 A. 2024.

16 Q. Is it your opinion that my client had no documents, either
17 computer or paper, related to Title IX Policies and Procedures
18 before that date?

19 A. I have no idea.

20 Q. If, hypothetically, such a document existed on the computer
21 at Ms. Bernal's office and that she transmitted that document
22 to her boss which then in turn was sent to Ms. Karron or to me
23 which in turn was sent to Mr. MacDonald, could those things
24 change the create date of that document?

25 A. Yes.

1 Q. So, in that scenario, it's very consistent with
2 Ms. Bernal's testimony that there was a policy and procedure
3 for Title IX in 2022 and 2023 -- that's what her testimony
4 was -- on her computer and in paper. Your testimony does not
5 refute that in any respect, does it?

6 A. The question that you asked I think that there is a second
7 part to it.

8 Q. Answer my question first, and then please explain to your
9 heart's content.

10 A. I don't know.

11 Q. Okay.

12 A. When you were moving these things around, sending them to
13 her boss, sending them to you, it shouldn't change the modified
14 date. The modified date was when the file last had a change
15 made to it, and that could be something as simple as changing
16 the name of the file or something of its content. And in the
17 screenshot that you provided or that they provided, it said
18 that there was content that was modified, content created on
19 May 9th, 2024, at 6:47. I don't know what that was.

20 Q. So, it could be anything. Right?

21 A. That's correct.

22 Q. It could be somebody merging documents, taking two PDFs and
23 merging them together and that would constitute a modification;
24 wouldn't it?

25 A. Well, the merging of the documents would create an entirely

1 new file, and at that point you wouldn't have anything that
2 would go back to that August 10th, 2022.

3 So, you would have a new create date and you would have a
4 new modified date, because you are creating something entirely
5 new that didn't exist prior.

6 Q. Even if you save it under the original document. You bring
7 a document and you don't merge them separately when you bring
8 one to the other, you are not going to change the create date?

9 A. I'm sorry?

10 Q. You are suggesting to the Court that if you add content
11 from one PDF to another that you're creating a new document?

12 A. Correct.

13 Q. With a new create date?

14 A. No.

15 Q. But if you don't save as that it's going to be the same
16 create date; isn't it?

17 A. Well, you have to save them if you are going to merge them
18 together.

19 Q. I said "save as." If you do "save as," that creates a new
20 create day.

21 Correct?

22 A. That's correct.

23 THE COURT: Just so I understand the document, the
24 exhibit on, Exhibit 10, which one of these four did you receive
25 from the defendant, or did you receive all four from the

1 defendant?

2 THE WITNESS: I believe I received everything. I'm
3 pretty sure.

4 I don't have my file in front of me, and I am not sure
5 what you are actually referring to.

6 THE COURT: These two documents here, are these the
7 screenshots that you are referring to, all four of these?

8 THE WITNESS: Yes, that's correct.

9 MR. YOUNT: No more questions, Your Honor.

10 THE COURT: Any redirect?

11 MR. MACDONALD: Yes, Your Honor. Briefly.

12 REDIRECT EXAMINATION

13 BY MR. MACDONALD:

14 Q. Now, Mr. Stafford, I'd like to show you the document that
15 we previously looked at that's been identified as Exhibit 10.

16 Do you recall seeing this document a moment ago?

17 A. Yes, I do.

18 Q. You were just asked questions a few moments ago about doing
19 an analysis of the computer on which a file is stored. I
20 forgot the term that was used.

21 A. Yes, it's called imaging the hard drive. Yes.

22 Q. And you referred to imaging a hard drive as being the most
23 comprehensive way to look at files?

24 A. It would be, yes.

25 Q. Would imaging the computer on which a file is stored

1 indicate any difference in the characteristics here that you've
2 identified in these images?

3 A. No, not for those files.

4 Q. You also were asked a lot of questions about creation dates
5 and modify dates. Do you recall that?

6 A. I do.

7 Q. Would the creation dates or the modified dates have any
8 impact on these characteristics and discrepancies you have
9 identified in your analysis?

10 A. No.

11 Q. And you were also asked about sending a document via e-mail
12 or backups that could be used with a Microsoft One Drive it
13 sounded like. Do you recall that?

14 A. I do.

15 Q. Could that affect any of the discrepancies identified in
16 these images?

17 A. No.

18 MR. MACDONALD: No further questions.

19 THE COURT: Thank you. You may step down.

20 Any further evidence from the plaintiff?

21 MR. MACDONALD: That's all we have, Your Honor. Thank
22 you.

23 THE COURT: Okay. Any additional evidence that the
24 defendant wishes to introduce?

25 MR. YOUNT: Yes, Your Honor. We would call Mr. Hasbun.

1 (The witness, Habib Hasbun, was duly sworn.)

2 COURTROOM DEPUTY: Thank you, sir. Please have a seat
3 and state and spell your name for the record.

4 THE WITNESS: My name is Habib Hasbun. First name
5 H-A-B-I-B, last name H-A-S-B-U-N.

6 COURTROOM DEPUTY: Thank you.

7 MR. YOUNT: May he proceed, Your Honor?

8 THE COURT: Yes.

9 DIRECT EXAMINATION

10 BY MR. YOUNT:

11 Q. Would you please introduce yourself to the Court and tell
12 Judge Torres what you do for a living.

13 A. So, I'm an electronic engineer by profession. I have a
14 major in robotics and artificial intelligence. I have a
15 masters degree in telecommunications and network engineering,
16 and I have been programming since I'm ten years old. I've been
17 around computers all my life.

18 Q. What do you do for a living?

19 A. I have an independent IT company. I handle the IT
20 department for different companies here in South Florida, and
21 I'm also an engineering and technology professor for Miami-Dade
22 College.

23 Q. Academir, is that a client of yours?

24 A. They are.

25 Q. Briefly, if you would, how did you first find out about

1 this issue of claims of fraud and forging documents and data?

2 How did you find out about this?

3 A. I mean, about fraud in particular, I had no idea that they
4 were claiming fraud. Originally, I found out about this
5 because Magdiel called me and said that they needed to meet
6 with me at the office around, I don't know, May of something.
7 I really forget the exact date.

8 I went to meet with them, and then when I got there they
9 explained to me that they were being sued and they needed my
10 help in finding certain files.

11 Q. Okay. What were you asked to do and then what did you do?

12 A. So, at the time I met with Olivia -- well, I met first with
13 Magdiel and then with Olivia, and I sat in her computer. And
14 she said there was a particular file that she was looking for
15 that she couldn't really find the original. She could find a
16 file with the content but not the original file she had created
17 back in 2022.

18 So, at that point in time, I started looking in her hard
19 drive. It turns out that she had done multiple backups of --
20 at the time it seemed to me that she was working out of her
21 desktop computer and her laptop computer, and she would
22 exchange files from desktop to laptop using USB drives. And
23 she kept backups over backups over backups. So, she had
24 multiple files in her hard drive.

25 It took me quite a while, maybe two or three hours to be

1 able to find the original file that had the create date of 08
2 of 2022, and that's when I took the screenshot of the file
3 itself, of the metadata.

4 Q. You are the person that took the screenshots that we were
5 looking at earlier on the screen. Is that correct, sir?

6 A. Yes, it was.

7 Q. For the purposes of the record, this is Document 41-3,
8 which has already been submitted to the Court, Your Honor, this
9 is -- these are the documents. This is your affidavit just to
10 refer to where we are.

11 So, these are the documents -- these are the three
12 screenshots of metadata that you produced. Is that correct?

13 A. That is correct.

14 Q. Now, you also produced the actual document.

15 Explain to the Court what this document is that follows.

16 A. This was the document that I was asked to find in
17 Ms. Bernal's computer.

18 Q. So, the document which starts on page 7 of 17 or 41-3,
19 which is titled, Title IX Policies and Procedures, dated
20 2022-2023, this is the actual -- this is a reproduction of the
21 Word document you found on Ms. Bernal's computer. Is that
22 correct?

23 A. That is correct.

24 Q. And based on your review of the metadata, when was this
25 document created?

1 A. At some point in 2022.

2 Q. All right. Can you explain to the Court why -- give us an
3 explanation as to why the date modified and the date accessed
4 might be 5/9/2024. What does that mean?

5 A. So, that is the date, the last date and time this document
6 was modified somehow.

7 Back a few years ago Academir was worried about maybe
8 losing information out of any of their computers, so they had
9 me go and make sure that all of their computers were constantly
10 backed up. One of the things that I did was I changed their
11 complete e-mail exchange system to Microsoft, which included
12 One Drive.

13 I installed One Drive on each and every one of their
14 computers, and their documents and pictures and important
15 folder are being constantly backed up. When you do this,
16 Microsoft Office applications has a feature that automatically
17 turns on that is auto save. Auto save saves an open file every
18 five minutes in order to avoid losing any type of data. So,
19 the fact that you have the file open, even without any
20 modification, would change the modified date.

21 Q. Okay. Just so I make sure I understand, if I open this
22 actual document from Ms. Bernal's computer on 5/9/2024, I open
23 it and don't touch the keys otherwise --

24 A. Every five minutes you would get a new modified date.

25 Q. Even though I'm not changing any of the non metadata,

1 whatever, the words on the page, I am not changing that?

2 A. If you click on print, it would change the modified date.

3 Q. Okay. Now, you heard testimony about -- well, let me ask
4 it this way.

5 You would agree that the best way to analyze a document, an
6 electronic document to determine when it was created and when
7 it was modified, would be to go to the source and look at the
8 actual computer. Is that correct?

9 MR. MACDONALD: Objection. He is a lay witness. He
10 isn't here to testify as an expert. He doesn't have any
11 firsthand knowledge.

12 THE COURT: I will sustain to the form of the question.

13 MR. YOUNT: Are you sustaining to re-ask or you want me
14 to qualify him?

15 THE COURT: You can rephrase the question.

16 BY MR. YOUNT:

17 Q. What is the best way to determine when documents, Word
18 documents were created and modified and things like that?

19 What's the best way to do that from a computer science
20 standpoint?

21 MR. MACDONALD: I'm going to object to that. From a
22 computer science standpoint, he is not here to testify as to
23 that. He doesn't have any personal knowledge. I ask that the
24 question be rephrased.

25 MR. YOUNT: He is a computer science expert, and he

1 does have personal knowledge because he did it.

2 THE COURT: I will allow it. Overruled.

3 THE WITNESS: The best way is to look at the file in
4 the original location that it was created. So, you can
5 actually look to check when the file was created without the
6 create date being modified by the re-saving of the file.

7 BY MR. YOUNT:

8 Q. What are the pitfalls and potential errors that could
9 develop if instead of you going and looking at the actual
10 computers somebody sends that and copies it or e-mails or sends
11 it by FTP, what could happen to the metadata in that docket
12 which would make it -- that metadata unreliable?

13 A. So, what I heard before about the modified date not
14 changing, that is true. It wouldn't change when the file is
15 moved. However, the create date, which I think was one of the
16 issues that was being contested would definitely change.

17 So, the only way for you to actually see what was the real
18 create date of the document was to go into Ms. Bernal's
19 computer and look at the actual document.

20 Q. So, the fact -- the last question is, the fact that the
21 document was opened for five hours, that doesn't necessarily
22 mean that any changes were being made to it, does it?

23 A. No, you can be reading the file, just reading the content,
24 and it would change the modified date automatically.

25 MR. YOUNT: No further questions.

1 Thank you, Your Honor.

2 THE COURT: Do you know if -- do you, in fact, know if
3 Ms. Bernal's computer was set up to do automatic saving every
4 five minutes?

5 THE WITNESS: I set it up, and I remember that that was
6 one of the things that they asked me, why is it giving me a
7 modified date of today. I mean, I cannot testify as whether
8 there was any change in the document after I left, but I
9 remember that I was the one who found the actual document, did
10 the screenshots, and they asked me why is this showing a
11 modified date of today. And I explained and I showed them
12 where the auto save was turned on.

13 THE COURT: Cross-examination?

14 MR. MACDONALD: Yes.

15 CROSS-EXAMINATION

16 BY MR. MACDONALD:

17 Q. Good afternoon, Mr. Hasbun.

18 Now, you are a consultant for the defendants. Is that
19 correct? Or at least Academir?

20 A. I am.

21 Q. And do you have any formal training in digital forensic?

22 A. Not in digital forensics, per se.

23 Q. And you are not certified as a forensic examiner, are you?

24 A. I am not.

25 Q. Have you ever been qualified in a court of law to testify

1 about metadata or any other computer forensic?

2 A. No, I have not.

3 Q. And you previously testified that on May 15th, 2024, you
4 went to help get those screenshots that we reviewed moments
5 ago. Is that right?

6 A. As I said, I really forget the exact date, but around that
7 time, yes.

8 Q. Okay. I am going to show you what's been previously marked
9 as Plaintiff's Exhibit 10 for identification.

10 Do you recall these images being shown?

11 A. Yes, I do.

12 Q. And you helped take these screenshots.

13 Is that correct?

14 A. I didn't help. I took them.

15 Q. You took them. Okay.

16 You previously testified about the creation date and the
17 modified date and how that might change.

18 Is that right?

19 A. That is correct.

20 Q. And when you are talking about the create date and modified
21 date, you are referring to these indicators in the file's
22 property. Is that accurate?

23 A. That is correct.

24 Q. You testified about One Drive backups and how those could
25 alter those modified or create dates. Is that accurate to

1 state?

2 A. No, One Drive backups is one thing. What I was referring
3 to that would change the modified date is the auto save feature
4 from the Microsoft Office applications, including Microsoft
5 Word.

6 Q. So, you're referring to the auto save feature that could
7 change to the modify or create date of the file. Is that
8 correct?

9 A. Not the create date, the modify date.

10 Q. The modify date, okay.

11 And when you were contacted by Academir, they were
12 requesting your assistance in regards to finding the file with
13 the proper date in those properties. Is that fair to say?

14 A. That is correct. In that time, as I believe Ms. Bernal had
15 found a file that contained a Title IX, but she did not find
16 the original one. And, as I said, she had, I mean, a lot of
17 copies. I forget how many there were, but we had to search the
18 hard drive until we were able to find it.

19 Q. You said it was called a One Drive backup?

20 I don't want to use an incorrect term.

21 A. So, when the One Drive backup is configured on the
22 security -- so, Microsoft used to have this feature for
23 everybody, and a few years ago they decided to take out the
24 auto save feature from everybody, unless you were an actual
25 paying monthly or yearly customer from Microsoft Office 365.

1 So, if you have a Microsoft Office 365, then the auto save
2 feature starts to kick in.

3 This is a feature that whenever you have the document open
4 it saves your file every five minutes or unless you make any
5 modifications. So, by having the file open, it would
6 automatically change the modified date.

7 Q. With that auto save feature that you just described, would
8 that impact any of these characteristics such as character
9 count, line count, paragraph count?

10 A. They would not.

11 Q. How do you know that? Is that based on your experience?

12 A. So, I may not be a court-certified forensic computer
13 examiner, but I am an electronic engineer. I am the type of
14 person that we are called on to create computers, so I have a
15 lot of experience in how computers work at the byte level.

16 Q. And in your experience working on computers up to the byte
17 level, the auto save features would not have affected any of
18 those characteristics?

19 A. They would not.

20 THE COURT: What was the date that you were tasked
21 again to look for the file?

22 THE WITNESS: I am not exactly sure on the date, but it
23 was probably May 9th, because this was the date that I opened
24 it to look at the actual metadata so I could take the
25 screenshots.

1 THE COURT: And when you opened it, you opened it on
2 what computer?

3 THE WITNESS: On Ms. Olivia's computer.

4 THE COURT: I see.

5 BY MR. MACDONALD:

6 Q. Do you have any firsthand knowledge as to why any of those
7 characteristics might have been altered or changed from the
8 documents in this case?

9 A. No, I do not.

10 THE COURT: At the time that you -- how long after you
11 found the document and you opened it -- is that what you're
12 saying?

13 THE WITNESS: Yes.

14 THE COURT: How long did it take you to take these
15 images?

16 THE WITNESS: To take the actual images?

17 THE COURT: Right.

18 THE WITNESS: A couple of minutes. So, however --
19 also, these images you don't need to actually open the document
20 itself to be able to take the pictures of the metadata.
21 However, we needed to see if the document was actually what she
22 was looking for.

23 THE COURT: Sure.

24 THE WITNESS: So the document was opened so she could
25 look at the metadata, and after she verified that was the

1 document we were looking at, then I took the pictures off the
2 screenshots.

3 THE COURT: How did you find the document?

4 THE WITNESS: Performing searches on the hard drive.

5 THE COURT: Because what -- what searches did you look
6 for?

7 THE WITNESS: The thing is, the way that Windows Find
8 or Windows Search works, it actually has to create a database
9 with key words and file names and things of that nature.
10 Usually, whatever you have access first goes on top of the
11 database, so whenever you perform a search, it tries to find
12 the latest documents that you have opened that fit that
13 criteria, and most people actually, they find the document and
14 they stay with that.

15 So, I had to go -- when I ran the search on the actual
16 hard drive, it found two or three documents, and none of them
17 were the ones that had the original 2022 date. So, I had to go
18 and look at sub folders over sub folders.

19 THE COURT: Were they also called Title IX Policies?

20 THE WITNESS: Yes, the title never changed. She had
21 multiple documents with the same --

22 THE COURT: I see.

23 THE WITNESS: It was like she was saving them onto the
24 USB, and then it said USB backup, and she copied everything
25 from the USB. And she had multiple USB backup folders and all

1 of them had duplicated files on them.

2 MR. MACDONALD: Did Ms. Bernal tell you why she had so
3 many duplicative files on the Title IX document?

4 THE WITNESS: She was afraid of losing any of her data.

5 BY MR. MACDONALD:

6 Q. Did you have any way of independently verifying the content
7 of the document and whether it existed in 2022?

8 A. No.

9 Q. And you didn't conduct any forensic analysis to determine
10 if the document you looked at was manipulated or altered, did
11 you?

12 A. No.

13 MR. MACDONALD: No further questions. Thank you.

14 THE COURT: Any redirect?

15 MR. YOUNT: No.

16 THE COURT: All right. Thank you very much.

17 Any additional witnesses for today?

18 MR. YOUNT: Just plaintiff's counsel, Your Honor.

19 And I will proffer and he may stipulate. I will
20 proffer that the reason I want him to testify is that in May
21 and in June of 2024 he was aware that Ms. Karron was running
22 point on discovery and document production. He was aware that
23 she was in the process of leaving one law firm and going to
24 another, so she didn't have full access to the file.

25 Further, that he was aware and, in fact, received an

1 e-mail from Ms. Karron's former associate who offered on June
2 the 12th of 2024 to come look at the data, that he ignored it,
3 made no further -- he initially requested to have access to the
4 computers. We offered it to him. He ignored it and then came
5 and filed this motion alleging perjury and fraud.

6 Those are the things that I would ask him if he were
7 called to testify in this case. I think they're
8 uncontroverted.

9 MR. MACDONALD: I am happy to talk about the specifics
10 of the case, but I would object to being called as a witness,
11 given I am counsel of record on the case and there is no
12 necessary reason for me to be called as a witness, especially
13 given the circumstances. If anything, talking about the
14 creation and the exchange of documents then if anything I would
15 like to call the defense counsel as it stands if that's what we
16 are doing here.

17 THE COURT: Right. I think that that would be the
18 extension of it, but I don't think we need to do that.

19 MS. KARRON: Could I just add to the proffer, Your
20 Honor, that I personally spoke to Mr. MacDonald in several
21 occasions and said my client has nothing to hide here. I will
22 give you whatever you need. Come look at the documents. Come
23 yourself. I offered to have other principals from other
24 schools informally just speak with him so he could ask them
25 about the policies they always had in their manual and none of

1 that was ever done.

2 THE COURT: Whatever. So then I won't require you to
3 call him, but other than that issue, do you have any additional
4 evidence?

5 MR. YOUNT: No additional evidence other than the
6 documents that are attached to the response in opposition,
7 which we would ask for Your Honor to consider that as part of
8 this hearing.

9 THE COURT: Okay. That's part of the record.

10 All right. Now you on behalf of the plaintiff, are you
11 admitting all the documents that are in these two binders?

12 MR. MACDONALD: Yes, Your Honor.

13 THE COURT: Okay.

14 MR. YOUNT: We have no objection except for the expert
15 report, which is hearsay.

16 THE COURT: The report?

17 MR. MACDONALD: I believe it's 17 or 15, Your Honor.

18 MR. YOUNT: 15.

19 THE COURT: The objection is overruled. I will admit
20 it. So, all those exhibits will be admitted as part of the
21 hearing, through 24, I guess.

22 (The two exhibit binders were admitted in evidence.)

23 MR. MacDonald: Okay.

24 MS. KARRON: Your Honor, if I may.

25 THE COURT: Now, the next question is what is it

1 that -- what do I make of it based on the record presented at
2 this point?

3 So, let me turn to counsel for the plaintiff.

4 MR. MACDONALD: Yes, Your Honor.

5 You just want me to address the relief or would you
6 like me to go further into the details and talk a little bit
7 about --

8 THE COURT: Right. What finding can I make based upon
9 what I have heard?

10 MR. MACDONALD: Yes.

11 So, I will keep it brief, Your Honor, but today we are
12 asking that the default judgment be entered against the
13 defendants, and we are aware that it's a very severe sanction
14 but given the circumstances of the evidence withheld in this
15 case, the false statements that you heard from Ms. Bernal
16 regarding the production of these documents, and even more
17 specifically, stepping back a little bit to believe the
18 defendant's version of events as to why these documents have
19 not been produced and why many of their responses were not
20 accurate, you would have to disregard the evidence from
21 Mr. Stafford about the document fabrication without any
22 reasonable explanation to the contrary.

23 We heard Mr. Hasbun say that there was no explanation
24 as to why those characteristics did not match anything they
25 have given us. That is because it is not the same document.

1 Even if you were to believe the Title IX policies
2 existed at this time, you would also have to ignore the fact
3 that they were not published online; they were not distributed
4 to a single student; there is no mention of them in any school
5 handbook, which are included on the exhibits.

6 THE COURT: Let me take it a step at a time, though.

7 THE WITNESS: Yes, Your Honor.

8 THE COURT: You may be jumping over a predicate that I
9 need to understand before I get to the point you're asking me.

10 When you asked for production of -- I saw that the
11 interrogatory and their answer was none with respect to any
12 changes in the last five years. Right?

13 So, with respect to the request for production of the
14 Title IX policy in effect at the time of the incident, which
15 was in 2023. Right?

16 MR. MACDONALD: Yes, that's correct, Your Honor.

17 THE COURT: What documents did you get?

18 MR. MACDONALD: So, we did not receive any school
19 policies or policies for the Miami-Dade County Title IX manual,
20 so no policies from the school as to Title IX.

21 THE COURT: Just so I'm clear, the document that we
22 have been examining here, where did I put it -- which exhibit
23 is the one that you are focusing on?

24 MR. MACDONALD: It's number 10.

25 MR. YOUNT: It's number 10.

1 THE COURT: Is it 16?

2 MR. MACDONALD: Number 10 would be where it starts
3 after the screenshots that we reviewed. That would be the
4 policies for that year.

5 THE COURT: The attachments. I see.

6 When did you first see this document?

7 MR. MACDONALD: It was a week, give or take, after
8 Ms. Bernal's deposition is the first time we received it
9 despite propounding the request in November, 2023.

10 THE COURT: In response to the original request in
11 November of 2023, what did you receive?

12 MR. MACDONALD: No policy documents, but in the
13 response, which I can point you to Your Honor, in Exhibit 3.
14 So, in Exhibit 3 -- I'll point you to the exact number --
15 number 11, Your Honor, identify -- it asks that they describe
16 in detail any policies and procedures related to Title IX,
17 including but not limited to reporting and investigation
18 complaints that were in effect at any time during plaintiff's
19 enrollment.

20 THE COURT: You need to slow it down. Speak a little
21 slower because we have the court reporter.

22 MR. MACDONALD: I apologize.

23 Your Honor, it requests the policies or procedures
24 related to Title IX compliance, including but not limited to
25 reporting and investigation of complaints that were in effect

1 at any time during plaintiff's enrollment as a student at
2 Defendant Academir.

3 THE COURT: Then they describe a series of documents.
4 Is that document in 10 included in here?

5 MR. MACDONALD: No, Your Honor.

6 THE COURT: Did you have a separate request for
7 production for the same thing?

8 MR. MACDONALD: That's correct, Your Honor.

9 THE COURT: What was that?

10 MR. MACDONALD: This would be Exhibit Number 4 in the
11 binder we provided, Your Honor. Request for production number
12 17, 18, 19, there is a few others there, they request both
13 policies related to Title IX and then sexual harassment
14 generally, as well.

15 THE COURT: Okay. So, Bates 248 to 283 were produced.

16 THE WITNESS: That's correct, Your Honor.

17 THE COURT: Are those the documents referenced in
18 interrogatory -- what was it -- 11?

19 MR. MACDONALD: That's my understanding, Your Honor.

20 THE COURT: Okay. So, then you didn't get this
21 particular document. Is that what happened?

22 MR. MACDONALD: That's correct, Your Honor. In
23 addition, we did not receive any documents related to any of
24 the investigations that Ms. Bernal described, including
25 specific incidents related that she described in her

1 deposition. There was no paperwork, no nothing ever produced
2 to us in addition to the revisions and the other items in the
3 interrogatories and request for production that we mentioned
4 earlier.

5 THE COURT: Okay. So then -- and other than the
6 corporate rep depo in May, were there any other depositions of
7 defendant people that were taken?

8 MR. MACDONALD: Yes, Your Honor, several.

9 THE COURT: Like who?

10 Who would be most knowledgeable in this issue, I guess?

11 MR. MACDONALD: I would say Rolando Mir, who is the
12 Chief Executive Officer of Defendant Superior, if I am correct.
13 Correct me if I am wrong, please.

14 And he deferred to Ms. Bernal on these issues.

15 THE COURT: Okay.

16 MR. MACDONALD: And additionally, as to Mir, his wife
17 was deposed, who Ms. Bernal referenced to, and who is also
18 listed as a Title IX coordinator.

19 THE COURT: I thought that was Xenia.

20 MR. MACDONALD: All three of them are listed as
21 Title IX coordinators in the documents that we received after
22 Ms. Bernal's deposition.

23 THE COURT: Oh, I see. Okay.

24 Ms. Bernal was the Title IX coordinator at the time for
25 students?

1 MR. MACDONALD: Yes, that is her testimony.

2 THE COURT: Okay. Did any of them refer to this
3 document?

4 MR. MACDONALD: The policies document that we just
5 looked at?

6 THE COURT: Exhibit 10.

7 MR. MACDONALD: I introduced it to them because they
8 all took place after Ms. Bernal.

9 THE COURT: So, the first deposition of the defendant
10 was Ms. Bernal's deposition as a corporate rep in May?

11 MR. MACDONALD: That's correct, Your Honor.

12 THE COURT: Okay. So, then you received this document
13 when in the production, Exhibit 10?

14 MR. MACDONALD: All right. It would have been roughly
15 a few days after Ms. Bernal's deposition, which took place on
16 May 9th, 2024, so just a few days after that.

17 THE COURT: I see. Okay.

18 Now that I had that context, go ahead.

19 MR. MACDONALD: Thank you, Your Honor.

20 Just a few other things I want to highlight. They also
21 did not make any mention of these documents in the initial
22 disclosure. They were never amended to reflect these documents
23 even after the disclosure.

24 THE COURT: Do I have the disclosures in these
25 exhibits.

1 MR. MACDONALD: Yes, you do, Your Honor.

2 MS. KARRON: They have been amended.

3 MR. MACDONALD: Just to clarify, Ms. Karron is
4 referring to Defendant Academir Charter School did amend their
5 final disclosures after the close of discovery to add those
6 documents but not within discovery.

7 THE COURT: Okay.

8 Where do I have the disclosures?

9 MR. MACDONALD: Exhibits 22 through 24, Your Honor.

10 THE COURT: Now, they do refer to Charter Schools
11 Title IX Policies and Procedures. Is that the amendment you
12 are talking about?

13 MR. MACDONALD: Yes, Your Honor.

14 THE COURT: That was on September 11th. That was last
15 week.

16 MR. MACDONALD: That's correct, Your Honor.

17 THE COURT: I see. So the original one did not have
18 that. Okay.

19 MR. MACDONALD: That's correct, Your Honor.

20 THE COURT: Okay.

21 MR. MACDONALD: So, yes, the plaintiff operated under
22 that assumption that those policies did not exist until that
23 time, but because of the circumstances of how they've been
24 produced, like the descriptions, the physical policies and
25 procedures, it's created questions as to what, if any,

1 documents are legitimate, even after Ms. Bernal's deposition,
2 that document, Exhibit 10, it does not reflect any fiscal
3 policies and procedures language, which she described
4 repeatedly in her deposition, leaving the question as to what
5 those documents were.

6 Now, Ms. Karron provided a document that was -- could
7 best be described as fiscal policies and procedures with a
8 table of contents and an end page with Exhibit Number 10
9 affixed to the back, and that was given to us as the fiscal
10 policies and procedures, again, raising the questions as to
11 where these were.

12 Even yesterday we received over 800 pages of documents
13 never before seen that apparently are the binder that
14 Ms. Bernal referred to in her deposition that these principals
15 have as to compliance, and as to Title IX. Again, never
16 received, and we were not able to utilize those in depositions
17 and throughout discovery.

18 But just to briefly highlight some of those elements I
19 was mentioning before, like I said, to believe that these
20 documents existed, you would have to believe that -- ignore the
21 fact, rather, that they were not distributed to students, were
22 not published online, and the school even publishes the board
23 of director meeting minutes online. And you can see every
24 policy being approve. There is no mention of Title IX ever
25 being approved on those documents.

1 This, on top of the forensic evidence from
2 Mr. Stafford, which still even today in this hearing we have
3 not received an explanation as to why the document shown in
4 those images does not match any document we've received, and
5 that kind of evidence is the kind that cannot be ignored when
6 we are talking about the authenticity of these documents and
7 the fact they were withheld for more than six months, and the
8 circumstances of their production.

9 And even assuming the authenticity of those policies,
10 we would need to disregard the fact that they were not produced
11 for that entire time period and weren't disclosed.

12 THE COURT: Let me ask this question.

13 MR. MACDONALD: Yes, Your Honor.

14 THE COURT: In terms of the connection to your claim,
15 in terms of understanding the nature of the prejudice to you,
16 how is the document that's Exhibit 10 inconsistent with your
17 claim?

18 In other words, how is it something that has an effect
19 on your case?

20 MR. MACDONALD: Yes. So, in terms of the policies,
21 they are extremely critical to the plaintiffs' claims for two
22 reasons. The first is the deliberate indifference standard
23 under Title IX. So, the plaintiff has to show that under these
24 policies, how did they respond to what happened to the
25 plaintiff. You know, did they handle things per their

1 procedures or did they deviate from those procedures, and
2 that's why it's so critical to know whether they were following
3 Miami-Dade County Schools policies, were they following this
4 different document that they had all these different versions.
5 That's very critical of that piece.

6 On top of it, on the negligence piece it's the same,
7 whether they are meeting the standard of care that they met for
8 other students, you know, what is the policy and procedure that
9 they are following in terms of investigation, the handling of
10 complaints, the notification of rights under Title IX, were
11 they given an opportunity for a hearing, whether they were
12 allowed to present evidence. All of these things were dictated
13 by the policies and procedures so that's critical to
14 plaintiff's claims.

15 And as to some of the documents --

16 THE COURT: So, in other words, I guess to some extent
17 is it more helpful for you now to have something with their
18 name on it as being policies from which you can then draw
19 contradictions in terms of what happened with the plaintiff?

20 Right?

21 In other words, you see my point, how useful is it
22 having now -- I understand the delay and all of that, but how
23 useful is having Exhibit 10 for you to use and how is that more
24 helpful than not?

25 MR. MACDONALD: So, could you repeat the question, Your

1 Honor?

2 THE COURT: Let me rephrase it this way.

3 In other words, now that you have Exhibit 10,
4 theoretically, you could pursue, as part of your negligence
5 theory, that they didn't do X, Y, and Z, when their own
6 policies required it.

7 MR. MACDONALD: Right.

8 THE COURT: Now, they've always referred to the
9 Miami-Dade Title IX policy, that is correct. Is that not
10 right?

11 MR. MACDONALD: No, they have not always. I mean, they
12 have made references to it.

13 THE COURT: Prior to the May deposition, did they ever
14 refer you to the Miami-Dade Title IX?

15 MR. MACDONALD: They referred to the Miami-Dade Student
16 Code of Conduct. I would have to check, I don't want to
17 misspeak, as to specifically the Title IX. My understanding is
18 no.

19 THE COURT: Putting that aside for a moment, I take it
20 you could use Exhibit 10 to highlight the contradictions versus
21 what they were supposed to do versus what you claimed
22 happened --

23 MR. MACDONALD: Yes.

24 THE COURT: -- or didn't happen, vis-à-vis, the
25 investigation.

1 MR. MACDONALD: Yes, that is absolutely true. The
2 difficulty becomes when we don't know what policy was in effect
3 at that particular time.

4 THE COURT: I understand that. But assuming it was in
5 effect in 2023, could you do that?

6 MR. MACDONALD: Yes.

7 THE COURT: Are there, in fact, contradictions between
8 what they purport to be the policy versus what happened with
9 your client?

10 MR. MACDONALD: Yes, absolutely. If you look at the
11 Miami-Dade County Miami-Dade County Title IX policies, which
12 they've referenced, there is strict record keeping
13 requirements.

14 THE COURT: Okay.

15 MR. MACDONALD: There is almost no records of what
16 happened in this case, very minimal. There is one or two case
17 management forms. There is almost no records in compliance
18 with those requirements. Students have to be given a notice of
19 rights. They have to be given hearings. It's comprehensive.
20 None of that took place in this case.

21 THE COURT: And talk about the policies that are
22 identified in Exhibit 10 in particular, that document, are
23 there contradictions that you could make of that document?

24 MR. MACDONALD: Yes. Yes, Your Honor. They are not
25 the same as the Miami-Dade County. I would say it's less

1 stringent, probably, than Miami-Dade County, but they are
2 similar to some degree.

3 THE COURT: Okay. So, I guess assuming that they both
4 are legitimate, there is no challenge to authenticity of the
5 document, ostensibly, they're required to comply with both,
6 their own as well as the county's?

7 MR. MACDONALD: No, they would not be required to
8 comply with both. They are not subject to following the
9 Miami-Dade County Public School's policies.

10 THE COURT: Says who?

11 MR. MACDONALD: So, as a charter school, they are
12 not -- they're not required to follow those policies. They can
13 have their own. Obviously, they have to comply with federal
14 law, but they do not have to adopt those policies and that's
15 part of the issues that have come up.

16 THE COURT: Okay.

17 MR. MACDONALD: The question is did they voluntarily
18 adopt those policies or did they have their own, and that's an
19 important distinction from the plaintiff's perspective.

20 THE COURT: Because, obviously, one potential solution
21 is to strike the policy, right, it was not produced back in
22 November, and it was not disclosed in the initial disclosures
23 and it only came -- and then we had this hullabaloo about what
24 this document was and all of that.

25 That's one potential remedy; is it not?

1 MR. MACDONALD: Yes.

2 THE COURT: But would you want that?

3 In other words, is that something that actually helps
4 your more than hurts you?

5 MR. MACDONALD: So, that is something we included in
6 our alternative request for relief, which was a jury
7 instruction on the fabrication of the evidence. I believe
8 there is the preclusion of those policies, at least their
9 introduction of it into evidence, and then an award of
10 attorneys' fees and costs in bringing the motion and addressing
11 the conduct. That was the alternative request.

12 But that certainly is an objection. The only comment I
13 would add is, assuming these haven't been produced and there
14 are these issues as we described as to those characteristics,
15 for example, just the failure to disclose investigations that
16 occurred, that alone, by itself, you're talking about deviating
17 from standard policies, we've never received any documents as
18 to any Title IX investigation despite Ms. Bernal's testimony
19 that multiple investigations have occurred.

20 In her deposition transcript, she described an incident
21 involving a first grade student with a teacher or an employee
22 who had their pants down in the bathroom, very explicit. She
23 said that the police were even involved. We have never
24 received any documentation to that effect, nothing.

25 THE COURT: Yeah, but be that as it may -- in other

1 words, do you need Exhibit 10 to make that argument?

2 MR. MACDONALD: So, not necessarily Exhibit 10, but I
3 would like to see, for example, how was that Title IX
4 investigation handled.

5 THE COURT: You see my point. That's a different
6 question.

7 MR. MACDONALD: Yes, Your Honor.

8 THE COURT: Remember, the focus here is on the effect
9 of Exhibit 10, assuming its authenticity because, obviously, if
10 it was not authenticity, if it was, as you are theorizing, then
11 that's a separate problem, but let's assume it's authenticity.
12 Then you have a secondary problem as to why it wasn't produced
13 until after that late in the day.

14 So, if you assume it's authentic, and your arguments
15 could be made about the failure to document things, for
16 example, strictly under title Title IX. You don't even need
17 the policy. Isn't that right?

18 MR. MACDONALD: So, not quite because many of the
19 duties relate to their handling of it. For example, the notice
20 of rights, the hearing, those we wouldn't know how the school
21 handled those without knowing what their policies were.

22 THE COURT: Okay. Let me ask you to focus --
23 obviously, your main theory is, as I understand it, that you do
24 this deposition, you examine the witness, they realize they
25 don't have any good policies, and you are making a big deal

1 about their failure of policies. And then your theory, I take
2 it from reading your motion, is that they were trying to, you
3 know, say that this was the policy when it really wasn't and
4 then only after the deposition you get this document?

5 MR. MACDONALD: That's correct, Your Honor.

6 THE COURT: So, if you look at Exhibit 10, in
7 particular, your theory is that they generated this in the five
8 hours under which that document was open on May 9th.

9 MR. MACDONALD: So, I'm not sure if they generated it
10 within that period, but that it was generated after
11 Ms. Bernal's deposition, because it wasn't produced that day.

12 THE COURT: Now, how do you square that with -- there
13 are two things.

14 How do you square that with the nature of the document?
15 I'm pretty good on generating Word processing, but I don't know
16 that I could have done this in five hours.

17 Do you see my point?

18 MR. MACDONALD: So, just so I understand correctly,
19 you're asking as to how it could have been created?

20 THE COURT: Yeah.

21 MR. MACDONALD: That document, specifically, was not
22 produced until several days, close to a week, from my memory
23 after Ms. Bernal's deposition. And some of the documents, for
24 example, the complaint form that's in the production, and it
25 has references to another school or another school district,

1 almost like it was taken from something else. It says Jeff Co
2 Public Schools, Jefferson County, I would imagine, but there is
3 references like that like it was put together hastily.

4 There are also some references that I can point out to
5 you in the actual Exhibit 10 in the following year that, for
6 example, it says -- I could walk you through it, but it says,
7 you know, things like "the academy of charter school" like they
8 replaced the words for the school, things along those lines.
9 That would indicate that it was hastily put together.

10 THE COURT: So, you are saying they may have adapted it
11 from an existing document?

12 MR. MACDONALD: Yes, Your Honor. And I would guess
13 that's the case by the references to other school districts in
14 those documents.

15 THE COURT: I see what you're saying.

16 Now, how do you square that with Mr. Hasbun's testimony
17 that he actually did look for this file, she had Title IX
18 documents already, he saw that, and then he kept searching and
19 then he found this document with this different creation date?

20 MR. MACDONALD: So, there is two different points I
21 would make on that end. The first is that he did not -- you
22 know, he searched for the file name, Title IX Policies and
23 Procedures. He opened it up just to make sure at that that's
24 what he was looking for and he took the screenshot.

25 So, if she had created -- this was after all of these

1 events for deposition and the production of the document. So,
2 that doesn't contradict anything as to whether that document
3 had just been included a week ago. He didn't authenticate
4 whether it existed in 2022. He opened up the document, took a
5 screenshot and sent it to us.

6 And, importantly, the very important piece is that in
7 Exhibit 10, those images, if you had taken a document that
8 existed in August of 2022, another policy document, any other
9 Word document, and you simply change the title of the document
10 to Title IX Policies and Procedures and took a screenshot, what
11 would happen is that it would show a creation date of the
12 August 2022, and the file properties would not match the
13 document. And that's exactly what is the case here.

14 The line count, the character count is a different
15 document, and we have heard no explanation as to why are the
16 documents that we've received, 10 or otherwise, different from
17 what is shown there.

18 THE COURT: Now, how do you address on that point their
19 offer to have you actually inspect the computer itself? It's
20 actually a server, the server itself.

21 MR. MACDONALD: Two points on that. First, they only
22 agreed to a limited examination of the computers, right.

23 So, you have to image the entire disc to do it
24 properly.

25 THE COURT: When was that offer made to you?

1 MR. MACDONALD: It was within the weeks following the
2 deposition.

3 THE COURT: Okay.

4 MR. MACDONALD: When the concerns were raised about the
5 authenticity of the documents.

6 MR. YOUNT: June 11, 2024.

7 THE COURT: Early in June?

8 MR. MACDONALD: Yeah, that sounds accurate.

9 THE COURT: When did you file your motion?

10 MR. MACDONALD: I don't know off the top of my head.

11 Let me find it. July 2nd, Your Honor.

12 And the other aspect just that I will highlight is the
13 characteristics that we just discussed as well would not be
14 changed if we looked at them on the computer versus somewhere
15 else, right, because that's the actual content of the document.

16 THE COURT: Have you deposed the principal, by the way?

17 MR. MACDONALD: Yes.

18 THE COURT: Did she authenticate this document?

19 MR. MACDONALD: I don't recall specifically, so I don't
20 want to mischaracterize her testimony. I believe she did
21 reference it in some regard, but I don't want to misstate it
22 without having the transcript in front of me.

23 But importantly, that same principal, per Ms. Bernal's
24 testimony, helped with gathering documents for this case. So,
25 wouldn't the first thing that you would grab would be your

1 compliance binder?

2 THE COURT: Oh, that's a good point.

3 What did she say with respect to that?

4 MR. MACDONALD: So, I don't recall if she was asked
5 specifically about the gathering of documents. I'm referring
6 to Ms. Bernal saying that she had helped gather documents in
7 the case.

8 THE COURT: Right, but I take it you asked -- who is
9 it, Ms. Bello?

10 MR. MACDONALD: Ms. Bello, that's correct.

11 THE COURT: I take it you asked whether she contributed
12 to the review of the documents in the case?

13 MR. MACDONALD: Yes, I believe I did, but I just don't
14 know off the top of my head, Your Honor. I just don't want to
15 misstate it.

16 THE COURT: I understand that but if, for example, her
17 testimony is corroborating of its existence, I guess that would
18 be something I probably would need to know. No?

19 MR. MACDONALD: Yes. As to whether she says it existed
20 at the time?

21 THE COURT: Right.

22 MR. MACDONALD: Yeah, I would certainly agree that it's
23 relevant, but at the same time she was involved in the document
24 production responding to these issues initially, so then it
25 would beg the question as to why, if that's true, why wasn't it

1 produced, why wasn't it disclosed, and the same would go for
2 the person who verified these interrogatories who is the chair
3 of the board of directors of the school.

4 No one knew about these policies, evidently.

5 THE COURT: Well, to that point, what did the other
6 officers or directors say about this document, Exhibit 10?

7 MR. MACDONALD: So, when the Chairman of the board of
8 directors, Mr. Alex Casas was asked, he couldn't recall
9 anything about -- he testified that it did go before the board
10 but couldn't explain why it was never recorded. He said maybe
11 it was a mistake and didn't really offer any testimony to those
12 policies other than that he didn't know, and the same as in
13 regards to Mr. Rolando Mir, whose deposition transcript is
14 before the Court as well.

15 THE COURT: Didn't you ask them -- for example,
16 Mr. Casas is the one who signed the interrogatory.

17 MR. MACDONALD: Yes, and he agreed that many of these
18 responses were not correct when confronted with the
19 discrepancies.

20 THE COURT: Did he authenticate Exhibit 10?

21 Did he purport to authenticate Exhibit 10 as one of the
22 policies that should have been referenced?

23 MR. MACDONALD: Yes. Well, he stated that it had been
24 approved by the board of directors, could not tell me any
25 details as to it and agreed that it was not included in the

1 interrogatory response at least when he was confronted with the
2 lack of that information there.

3 THE COURT: What was his explanation?

4 MR. MACDONALD: Didn't have one.

5 THE COURT: All right. So, then I guess the bottom
6 line question then I have for you is, do I have enough to make
7 the finding that you're asking me to make given that there may
8 be corroborative evidence to support the defendant's position,
9 right, because even if you say that Ms. Bernal is tainted
10 because she is the alleged wrongdoer here, she is supported by
11 Mr. Hasbun's testimony that he actually did look for a file and
12 he found a file that was consistent.

13 MR. MACDONALD: After her deposition.

14 THE COURT: After her deposition.

15 MR. MACDONALD: Right. And he could also --

16 THE COURT: If you take that at face value, what effect
17 does that have?

18 MR. MACDONALD: Could you repeat the question, Your
19 Honor?

20 THE COURT: In other words, if you take his testimony
21 at face value, what effect does that have on your request for
22 the sanction that you're seeking?

23 He attests that he did search for -- he was asked to
24 search for a file. He was looking for Title IX policies, and
25 he found various forms of that document upon doing multiple

1 searches until he actually found an August 22nd version of it.

2 MR. MACDONALD: My response to that would be that it
3 doesn't affect at least the fabrication for manipulation of the
4 evidence because he agreed that the saving, all of the things
5 he described has no impact on the actual characteristics of the
6 document outside of the creation date, like the paragraph
7 count.

8 Even the file size is not the same as the file we
9 received. Then it would beg the question, what document is
10 that in those images, have we received it. Again, given the
11 late production of these other elements, it's uncontroverted
12 that that is not the document, any of the documents that we've
13 received in this case. Yet, it was produced to us as, look,
14 this existed in 2022. Here is the proof. Here are the images.

15 I don't think it's anything necessarily wrong by
16 Mr. Hasbun or that it contradicts his testimony. He opened up
17 the document using the title. He looked at it, took the
18 screenshots. That could all be true, and it would not change
19 the fact that those characteristics do not match any evidence
20 they've given us, and we can't even get a reasonable
21 explanation, never mind a contradicting expert report as to
22 those aspects or even Mr. Hasbun's testimony to contradict
23 that.

24 So, that would be my response on that aspect, and if
25 true, even outside of that, let me step back, the other items

1 in interrogatory responses about revisions to the policies, why
2 wasn't that included, these other investigations, all of these
3 things. It would be a far stretch to say that all of these
4 things were just a coincidence.

5 They had duties to produce these documents, to give
6 truthful responses and to have to go through all of this puts
7 the plaintiff at a disadvantage and makes you question, for
8 example, in those images, what is that document, have we been
9 given everything.

10 And to that point, before we received many of these
11 documents, they, at the request of the plaintiff to verify
12 these documents, signed declarations saying they produced
13 everything. And then they produced, after they signed those
14 under penalties of perjury, have continued to produce
15 documents. So, you know, it's just not taking, you know, the
16 oath seriously. So that compounded with the withholding of the
17 evidence is -- I mean, that's discovery misconduct by any
18 measure.

19 THE COURT: All right. Let me turn to counsel.

20 MR. MACDONALD: Okay, Your Honor.

21 MS. KARRON: Your Honor, here the plaintiff has not met
22 the extreme burden of proof for the severely requested
23 sanction.

24 Here, the initial discovery responses, I was in charge
25 of gathering them with my associate, and the person that I was

1 given to talk to, in hindsight, was not Ms. Bernal and it
2 should have been.

3 So, we responded and referenced the Miami-Dade County
4 policy, and I think what's really important --

5 THE COURT: Wait. Who was it?

6 MS. KARRON: I spoke to Ms. Bello and Mr. Mir.

7 THE COURT: So, why would Ms. Bello not be the
8 appropriate person?

9 MS. KARRON: So, she gave me some documents, but none
10 of them included the Title IX policy. I think it could have
11 been the way I asked. I requested the handbook. She sent me
12 that.

13 THE COURT: Did she show you her binder?

14 MS. KARRON: She did not. I did not know there was a
15 binder at that time.

16 THE COURT: But you would have, obviously, gone to see
17 her. Right?

18 MS. KARRON: We did it all virtually but she didn't
19 mention that a binder existed. She sent me all of the
20 policies, here is what I have, and they referenced Miami-Dade
21 County policy. That's the discovery responses that reference
22 Miami-Dade County policy.

23 The critical distinction here is that the Miami-Dade
24 policy is the same. The only difference is the date, the
25 title, and changing who the Title IX coordinator and the

1 contacts are. The sum and substance of the policy has never
2 changed, and I'm going to get into some case law on why policy
3 doesn't even matter.

4 THE COURT: If it doesn't matter, then why can't I just
5 solve my problem with striking it. The defendant is not
6 opposed -- excuse me, the plaintiff apparently is willing to
7 take that.

8 MS. KARRON: You could, Your Honor, and there is
9 Supreme Court case law that I have copies for you --

10 THE COURT: So, you have no objection to me just
11 striking it?

12 MS. KARRON: I mean, I don't have any basis to object
13 to striking it. I think that the Miami-Dade policy is what
14 applies. There is consistent testimony from the chief of
15 police of the Florida International University who's the board
16 director who signed the interrogatories and said, yeah, it was
17 a mistake. I've seen this policy. This policy is the same
18 Miami-Dade policy. It's been around for years.

19 Susie Bello testified, yeah, I have the policy in my
20 binder. Everyone testified that the policy language is the
21 same. The only difference is that when they went to the --

22 THE COURT: Now, when you prepared the interrogatory
23 response, who was the one who was the -- that was Mr. Casas?

24 MS. KARRON: So, the chief of police for FIU is the one
25 who executed the interrogatories but he is not the one that

1 gathered the documents.

2 The recordkeeping, we're dealing with a small
3 mom-and-pop company.

4 THE COURT: Now, why would the chief of the police of
5 FIU --

6 MS. KARRON: Because he is the board chair, so he signs
7 interrogatory responses for Academir. He sits on the board.

8 THE COURT: Okay.

9 MS. KARRON: It was a record-gathering problem.

10 THE COURT: The question is simply what policies are
11 you governed by? I mean, it wasn't like --

12 MS. KARRON: We're governed by the Miami policies.
13 Forget whether we made changes, edited names, nothing major
14 changed, and everyone testified that the Miami-Dade policies
15 are what applied, except we are not going to tell them contact
16 the Miami-Dade Police because that's not who you contact.

17 We are not going to tell them contact the Miami-Dade
18 coordinator because --

19 THE COURT: How would he have personal knowledge of
20 that as the defendant?

21 How would he have personal knowledge of the particular
22 documents that were in place at the time?

23 MS. KARRON: How would Mr. Casas?

24 THE COURT: Yes.

25 MS. KARRON: Because he sits on the board and he

1 attends all the board of directors' meetings were he testified
2 they approve policies. And he was clear, yes, this is the same
3 policy. It's been in effect. Ms. Bernal even in her
4 deposition was clear.

5 I was not aware that they took the same policy in a
6 Word document and re-titled it Academir and updated the contact
7 information. I did not know that so --

8 THE COURT: So from your point of view, there is no
9 material difference between the School Board policy and that
10 document?

11 MS. KARRON: There is no difference. And on top of
12 that, the plaintiffs have testified that they never made a
13 formal complaint under that policy. Granted, students --

14 THE COURT: Well, they don't know.

15 MS. KARRON: Sure. They don't have the policy,
16 although the policies are referenced and the Title IX
17 information is in the code of the handbook that we've produced,
18 and it's all there. It refers to Title IX and gives reasons
19 for that with the City's Title IX coordinator.

20 So, what happened here is --

21 THE COURT: The City?

22 MS. KARRON: Miami-Dade County. It's the county. I'm
23 calling it a city, Miami-Dade County policy.

24 THE COURT: You are confusing me by calling it the
25 City.

1 So, it's a Miami-Dade County policy. That's what's
2 referenced in the handbook?

3 MS. KARRON: The Miami-Dade County's policy is
4 referenced in the handbook referring to Title IX.

5 THE COURT: Got it.

6 MS. KARRON: So, when we answered the question, were
7 there any changes, we are operating under the belief that,
8 yeah, the policy is the same.

9 Technically, that was incorrect. There were changes to
10 the title page and some minor things, but it's turning into a
11 mountain out of a molehill here.

12 The deposition of Ms. Bernal clarified that she created
13 a Word document from the Miami-Dade County policy and that only
14 had minor changes. The reason the character counts don't
15 match --

16 THE COURT: Now why -- let me ask you this question.
17 Did she reference that in her deposition directly by name?

18 MS. KARRON: The Title IX policy?

19 THE COURT: Yes.

20 MS. KARRON: Yes.

21 THE COURT: Did she have it in front of her at the time
22 of the deposition?

23 MS. KARRON: What she had was she grabbed a few
24 printouts just to refer to, so she had the school's fiscal
25 policies, and behind that she had a copy of the Miami-Dade,

1 just the steps that say what you need to do because they were
2 the same steps that they followed.

3 So, when that was requested, I gave that to
4 Mr. MacDonald. I actually went to Ms. Bernal's office -- I
5 don't think she knows this -- with Ms. Mir, and looked for what
6 she had so I could give it to him when we were there for
7 another deposition, and showed it to him and said, here is what
8 she was referring to.

9 THE COURT: Now, in the preparation for her deposition,
10 though, how would the -- this is the other problem. In the
11 preparation for her deposition, how would this not have come up
12 such that you would have learned about the existence of this
13 document?

14 MS. KARRON: I don't know, Your Honor. It didn't, and
15 I was, obviously, as surprised as counsel was to hear that they
16 had adapted it to their own policy, but nevertheless, the
17 substance is the same.

18 THE COURT: Did you meet with Ms. Bernal prior to her
19 deposition?

20 MS. KARRON: We did. We had an extensive meeting. All
21 the executives were involved, and without waiving privilege,
22 had discussions about policies and what we are handling in
23 deposition prep, but there was never any discussion that
24 Academir had taken the Miami-Dade policy and made a few changes
25 to the contact information. That I never knew.

1 Of course, I would have disclosed it if I knew, and I
2 fell on the sword when I found out, you know, when Kyle brought
3 this up. I said I had no idea, I'll get it for you
4 immediately, and I said to them go make copies.

5 Here is where the character count issue comes in. When
6 Ms. Bernal was requested, as she testified, from Kyle certain
7 documents, she took them all and merged them all into one PDF
8 and sent them to me. I didn't realize that.

9 So, I found out in my conversation --

10 THE COURT: How would that change the Word document?

11 MS. KARRON: Because the document is now pages and
12 pages longer because --

13 THE COURT: Yes, but it's a PDF document, not a Word
14 document?

15 MS. KARRON: Right, but that's the document that we
16 produced that they're comparing.

17 THE COURT: But, see, they're using the Word metadata
18 screenshot. They're not working off the PDF, which is a
19 different metadata.

20 MS. KARRON: What we did was forwarded everything that
21 we had in the system. Here is everything we've got and I just
22 wanted to open up the discovery and said I will give you
23 everything I can, come look, we will do whatever it takes so I
24 can show you that this has always existed and nothing has
25 changed.

1 THE COURT: That wouldn't explain why there is a
2 difference in metadata of the Word content.

3 MS. KARRON: As Mr. Hasbun testified, if you took
4 documents and merged them together, that would change the
5 count. It would affect the -- and the date. Like, we have the
6 document that says it was created in May of 2022.

7 For the Court to believe what's going on you would have
8 to believe that Ms. Bernal and Mr. Hasbun decided to
9 surreptitiously go find another document and call it our -- for
10 what reason?

11 We changed nothing substantive. There is no need to do
12 that. Nothing has changed here.

13 THE COURT: Do we have a copy of the Miami-Dade one?
14 Does somebody have it?

15 MR. MACDONALD: We did, Your Honor, Exhibit 19 is the
16 Miami-Dade --

17 THE COURT: Exhibit 19?

18 MR. MACDONALD: Sorry, 20, Your Honor, is the
19 Miami-Dade Title IX manual.

20 THE COURT: Okay.

21 MS. KARRON: And the depositions, you asked about
22 Ms. Bello's deposition, and we can share it with the Court. We
23 have copies of the transcripts digitally here, and she very
24 clearly testified, yes, it was in her binder and it exists.
25 Why it wasn't given to me on the firsthand is just sloppy

1 recordkeeping. But, Your Honor --

2 THE COURT: But she was designated as the corporate
3 rep.

4 MS. KARRON: Not until right before the deposition. I
5 didn't even know she existed until before her deposition,
6 unfortunately.

7 She would have been the best person to talk to.

8 THE COURT: Why wouldn't it have been the FIU guy?

9 MS. KARRON: I did not know he existed.

10 THE COURT: Because, apparently, he had the most
11 knowledge with the interrogatories.

12 MS. KARRON: Yeah, I don't make the rules,
13 unfortunately, Your Honor.

14 THE COURT: But you are the counsel who is telling them
15 that this is what we need to do to comply with the Court's
16 orders.

17 MS. KARRON: They told me that the board of directors
18 requires that he is the one that signs the interrogatories.

19 THE COURT: So, why wasn't he the corporate rep?

20 MS. KARRON: Because he is not the one with the most
21 knowledge, and as you know, he can designate whoever we wish as
22 corporate rep, and the person that had the most knowledge as to
23 Academir --

24 THE COURT: So, who was the person who had the most
25 knowledge who was consulted at the time of the interrogatory?

1 Obviously, just because he signed it -- I see your
2 point, he signed it, but he is not the person with the most
3 knowledge.

4 MS. KARRON: Right. No, I mean, I talked to Ms. Mir
5 --I had not talked to Ms. Mir. I talked to Mr. Mir, and I
6 spoke with Susie Bello, briefly, who forwarded me some of the
7 documents that she had.

8 THE COURT: Okay.

9 MS. KARRON: Had I known there was a manual --

10 THE COURT: Well, according to Ms. Bernal didn't she
11 testify that she should have been a person with knowledge
12 because she actually had the binder?

13 MS. KARRON: I didn't know that at the time, Your
14 Honor, yes. And in hindsight, absolutely, she was the best
15 person for it.

16 Your Honor asked the plaintiff how the policy impacts
17 the case, and there is pretty clear case law on point, and I
18 can give Your Honor copies if I could approach.

19 THE COURT: Just make your point.

20 MS. KARRON: Supreme Court case of Gebser versus Lago
21 Vista, and the Court talks about -- it says, "Lago Vista's
22 alleged failure to comply with regulations did not establish
23 the required actual notice and deliberate indifference, and in
24 any event, failure to --"

25 THE COURT STENOGRAPHER: I'm sorry, can you slow down?

1 THE COURT: You need to slow down.

2 MS. KARRON: Sorry, I'm a fast talker. I'll start
3 over.

4 "Lago Vista's alleged failure to comply with the
5 regulations, however, does not establish the requisite actual
6 notice and deliberate indifference, and in any event, the
7 failure to promulgate a grievance procedure does not, itself,
8 constitute discrimination under Title IX."

9 And then I also gave you another case out of the Ninth
10 Circuit which talks about ordinarily a school's failure to
11 comply with DOE regulations does not establish deliberate
12 indifference, and the same is true of a school's violation of
13 its own policies.

14 So whether the school violated the policy or even had
15 one doesn't change anything in this case. It doesn't change
16 the deliberate indifference standard under Title IX. This is a
17 case of after-the-fact harassment where the girl to the school
18 alleged that she was told by a boy that he wanted to touch her.
19 She told this to three school officials on that day.

20 She went home for the long weekend, and by the time
21 that she returned, the report was that now she's been licked by
22 the boy. So, at that point -- within a week she was withdrawn
23 from the school, so the investigation was very, very
24 short-lived and any deprivation of educational opportunity was
25 very, very short-lived because they asked the child, then they

1 called the children in with the school counselor and the same
2 thing was repeated.

3 So, there was never any thought in my client's mind
4 that this was a Title IX investigation. It was, Little Johnny
5 repeats to Little Susy X, Y and Z. Little Johnny's mom says it
6 came from his house and that's where they heard it, I'm sorry.

7 THE COURT: How old are the children we're talking
8 about?

9 MS. KARRON: Five years old.

10 So, there is no prejudice to the plaintiff in this
11 case. The testimony has always been consistent that there was
12 an existing policy and that it mirrors the Title IX policy.
13 The investigation, obviously, couldn't continue because of the
14 time frame.

15 The parent went to the police and said I want the
16 little boy taken out of the class right now, and the school
17 said, we don't have the authority to remove him. We could
18 switch your daughter to another class. We separated them in
19 the class. No, I want him kicked out and I want to see the
20 surveillance tapes. That's what the case is about.

21 The father, himself, did not initiate an investigation
22 with the police.

23 So, I think in this case while we made errors in
24 producing the documents and it took longer to get the official
25 copy of that document, the same referenced Miami-Dade policy in

1 the interrogatory answers from the outset hasn't changed.

2 I will let Mr. Yount have in.

3 MR. YOUNT: Thank you, Your Honor. I will be very
4 brief. I just want to back up and try to put a big picture
5 perspective on what's going on here.

6 This is a case with very questionable merits, and we
7 are litigating by the weaponization of judicial system with
8 discovery practice to try to win a case.

9 We made a mistake. We've admitted it. We said at the
10 outset, an interrogatory answer was inaccurate. It could have
11 been better done. We said Miami-Dade and it should have been
12 our own policy.

13 We didn't produce the document. We produced a bunch of
14 other policies, and then there was a time delay. The first
15 deposition, he finds out about the document. We produced it
16 immediately.

17 That's a mistake that, regrettably happens a lot in
18 litigation. We don't always get the documents the first time,
19 but we get them the second time, at least we try to. We do the
20 best we can. Here we made a mistake. But what's the harm?

21 There is none.

22 He had the document and was able to question everybody
23 about it who had any information about it, so there is no harm
24 or prejudice, but what we instead get is a motion to strike our
25 pleadings because we make a mistake in discovery and then he

1 creates this theory of perjury and fraud, misrepresentation.

2 That motion that was presented by the plaintiff
3 personally was one of the most offensive motions I have ever
4 seen. Perjury is what is being alleged of Ms. Bernal. It's
5 wrong. It's inappropriate, and it shouldn't have happened. It
6 shouldn't have happened that we made the mistake.

7 THE COURT: But then aren't there also inconsistencies
8 based upon what she said in her deposition versus what you
9 disclosed after?

10 MR. YOUNT: No. No, maybe inconsistencies on a hyper
11 technical level, but no, because one of the problems is we talk
12 about policy. And what is a policy?

13 It's like people say what is a church; is a church a
14 building or is it a context of people getting together.

15 Well, what's the policy?

16 I think of it --

17 THE COURT: For a school, for a school, it's very well
18 understood what a policy is.

19 MR. YOUNT: It is to you.

20 I bet you my understanding is different, and I bet you
21 Ms. Bernal's is probably different.

22 To me a policy is a piece of paper.

23 THE COURT: Right.

24 MR. YOUNT: It's not what they do. It's a piece of
25 paper.

1 I suspect that to Ms. Bernal, there is a policy that is
2 a piece of paper, but if she is asked what is a policy, it's
3 what they do. It's conceptually what they do or are supposed
4 to do.

5 THE COURT: I don't understand that argument.

6 In other words, at the time that the request for
7 production and interrogatory was made, they weren't asking for
8 an esoteric answer. They were asking for the document.

9 MR. YOUNT: They asked for a lot of documents, and we
10 gave them a lot of documents. So, we went through what we had,
11 what we considered or thought to be a complete set of the
12 relevant policies, and we missed that. We missed it.

13 But we didn't go back and create it after the fact.

14 THE COURT: Well, I guess the issue though is, it
15 happened on multiple occasions because it would have been also
16 required in the initial disclosure. Based upon Ms. Bernal's
17 testimony, that document was the focus of attention when she
18 first started, she said, about needing to update it and she
19 needed to work on it. She testified to all of that.

20 MR. YOUNT: Right.

21 THE COURT: That's in 2022-2023.

22 The initial disclosures are made -- the lawsuit is
23 filed in 2023. The initial disclosures are in 2023. Right?

24 MR. YOUNT: Yeah.

25 THE COURT: I fail to see how, if you prepared the

1 initial disclosures with some semblance of attention, that
2 somebody who would have been talked to along the line would
3 have said, oh, by the way, you're missing the actual policy.

4 It's hard to believe, frankly.

5 MR. YOUNT: But when you have the point person and you
6 rely on that one person, for the most part, you are limited to
7 the direction that they send you in.

8 THE COURT: Yeah, but she said that she talked to
9 Ms. Bello, who is the principal of the school. It wasn't just
10 a low-level person.

11 MR. YOUNT: Our point person initially was the
12 principal.

13 THE COURT: Right.

14 MR. YOUNT: And we didn't get the information.

15 THE COURT: So, in other words, I'm not necessarily
16 being critical of the lawyer. The issue is what the defendant
17 was obligated to do. How is it not disclosed -- in other
18 words, the reason why I think, to some extent, your offense at
19 being targeted by this motion is somewhat -- I can understand
20 it to some level, because it's a very serious accusation.
21 They're basically accusing your client of committing a fraud,
22 right. But on the other hand, it's just hard to believe that
23 despite multiple times when this should have been disclosed
24 well before May of 2024, that the defendant and the defendant's
25 people who are working with their law enforcement officers

1 wouldn't have said, oh, by the way, there is the main one here
2 in this binder.

3 That's the reason -- that just seems -- it's hard to
4 believe and so, therefore, it generated -- now, maybe they're
5 wrong, and that hasn't been decided, but it generated a lot of
6 skepticism as to how all of a sudden after the deposition when
7 she's being cross-examined about the absence of policies, you
8 end up with a 15-page document that says, "Academir, Title IX
9 Policies Effective 2022-2023."

10 That's highly suspicious, isn't it?

11 MR. YOUNT: I can answer it this way. I would think if
12 I were a juror and didn't understand litigation, I might agree
13 with you, but in reality, from my standpoint I don't find this
14 suspicious.

15 THE COURT: I am a judge and I understand the law.

16 MR. YOUNT: It happens all the time. From my
17 standpoint, I see it all the time that unless you drive over
18 there, you sit in their office and you get everybody who has
19 remotely touched the incident to say, guys, we got to get it
20 all, you are going to miss stuff and stuff gets missed, but
21 it's not intentional. It's not intentional and certainly,
22 there is no prejudice.

23 So, we shouldn't be having a significant substantive
24 argument about the consequences of a failure to disclose a
25 document which caused no prejudice whatsoever. If they didn't

1 have it for Ms. Bello's deposition and they wanted to
2 re-question her about it, that's okay. That's a reasonable
3 remedy.

4 All the other witnesses I believe that they had the
5 document for. So, to seek to strike pleadings and to call
6 people perjurers when there is really no harm, it's the whole
7 litigation strategy of we caught you in a discovery thing and
8 we're going to make you pay for it. And that's not right.
9 It's just not right, and that's why I think this motion should
10 be denied in its entirety.

11 If there were any prejudice, we could cure it by
12 allowing another deposition. We can pay for the deposition and
13 the court reporter, but to suggest that anything should be
14 stricken, a document, an exhibit, a pleading, it's just -- that
15 would far exceed, be far excessive relief than is warranted as
16 to what happened here.

17 That's all I have. Thank you, Your Honor.

18 THE COURT: I will let you reply on the prejudice
19 argument.

20 MR. MACDONALD: Thank you, Your Honor.

21 I will keep it brief.

22 So, on the prejudice point, I just -- I have to address
23 the merits because it was -- as the claim was described, and I
24 understand from their perspective it might be different, but to
25 call it Little Johnny and those kinds of terms, you know, what

1 really happened from the plaintiff's perspective, what has been
2 alleged is that a child was molested. And that's very
3 important in Title IX, and the distinctions that result in
4 prejudice that are just being breezed over are the changes that
5 were made to this Academir policy.

6 Let me step back. First, this document is titled
7 Academir Charter School. It is unique to the school, but it
8 seems that the defendants are trying to blend the two policies
9 to try and seem like they were the same document. They were
10 not the same document. And importantly, there are material
11 distinctions, right.

12 Number one --

13 THE COURT: What is the most prejudicial distinction?

14 MR. MACDONALD: I would say, one, who is the Title IX
15 coordinator, and, two, how are complaints reported. If a child
16 is molested, how is it reported.

17 Those are distinctions that were made in those
18 policies. They changed -- and by their own admission, they
19 changed the coordinators who they should be reported to, a web
20 form to report these type of incidences. All of those
21 distinctions are very important when you're saying, for
22 example, that the plaintiff, you know, she didn't report it.
23 That's part of the merits issue here.

24 THE COURT: How is the method of complaint relevant to
25 your case?

1 The mother complained to the principal and -- in other
2 words, how does that play into this case?

3 MR. MACDONALD: Because of notice, right.

4 The defendants have said that they were not made aware
5 of an allegation of physical sexual assault, that it was verbal
6 as Mr. Karron described. So, how they are notified of these
7 things is very important, right.

8 Was the teacher notified?

9 Was Ms. Bello, the principal, was she someone for
10 Title IX purposes someone that could receive those complaints
11 and had a responsibility from that point to initiate an
12 investigation?

13 THE COURT: But is it true that there was this initial
14 allegation and then a withdrawal of the student in a week?

15 MR. MACDONALD: From when it was reported, yes, she was
16 withdrawn a week thereafter because they were told, you know,
17 take it or leave it, we're not going to do any -- you know,
18 it's part of the merits issues but they said, we're not going
19 to do any remedial measures. We're not going to separate the
20 kids. If you don't like what we're doing, tough luck. You can
21 take your kid out.

22 Obviously, they are going to disagree with that, which
23 I understand, but that's the issues.

24 THE COURT: I understand that issue, but with respect
25 to the complaint and the mechanism for complaint, how is that

1 proximately related to this case because we all agree they
2 received notice?

3 The issue isn't the notice. The issue is what they did
4 about it and your dissatisfaction with that, but how is the
5 notice mechanism for something having to do with particular
6 following of a policy language relevant to the case?

7 MR. MACDONALD: So, as to the first point, there is a
8 dispute as to the notice issue, because they described
9 different reporting and what was alleged by the student. That
10 includes how the student was interviewed by the guidance
11 counselor.

12 All of those things are material facts that are in
13 dispute that would be impacted by how Title IX complaints are
14 handled.

15 Now, as to the aspect of her being withdrawn, well, the
16 question is, first, were law enforcement authorities contacted,
17 which they were not. The parents contacted them several days
18 thereafter because the school did nothing.

19 Did they contact the Florida Department of Children and
20 Families? They did not.

21 And all of these things --

22 THE COURT: Now, wouldn't the Miami-Dade policy require
23 them to contact law enforcement?

24 MR. MACDONALD: That's absolutely right.

25 THE COURT: So, therefore, to that point, their

1 argument is there is no prejudice because they wouldn't need to
2 create that document because they would already be bound by
3 that same requirement anyway, so they are not giving themselves
4 or absolving themselves of some duty that they didn't otherwise
5 have.

6 MR. MACDONALD: But I would say that they are, in the
7 sense, if they would have followed Miami-Dade policies they
8 would have reported it to the Miami-Dade County Office Civil
9 Rights Compliance.

10 There would be records of those complaints. What have
11 they alleged? What is happening with the case? Was there a
12 hearing initiated? Was there supported measures?

13 All of those things we would be able to access from the
14 county if what they are saying is true versus if it's through
15 the school, there is a different coordinator, it's Ms. Bernal,
16 or it's someone different.

17 Also the training, we have also brought claims for
18 failure to train properly under negligence theory. That's the
19 same thing, and the policy documents that they produced, it
20 describes the coordinators and the responsible individuals
21 going through certain trainings. All of those things differ
22 between Miami-Dade County and the school's policy itself.

23 THE COURT: Now, with respect to the issue of the other
24 prejudice arguments being made that, yes, it was disclosed late
25 but it was disclosed well in time for other depositions

1 including Ms. Bello, including the other witnesses that you
2 asked about who may or may not have -- it's a little
3 speculative to me -- corroborated the existence of that
4 document prior to May 9th.

5 So, the argument being, what prejudice have you really
6 suffered?

7 MR. MACDONALD: So, in response to that I would say
8 that that would be true assuming that the only issue was that
9 single document in the depositions, but it's much broader than
10 that, right, especially considering the fact -- I mean, the
11 corporate representative signed declarations saying that
12 everything had been produced. You know, we received 800
13 documents yesterday of policies and procedures -- and there is
14 case law to this point, but describing that the prejudice
15 occurs when a litigant is forced to question whether any of
16 these things are legitimate because they're willing to sign a
17 declaration under oath, saying this is accurate, we've given
18 you everything, but we actually have more documents, more
19 policies, and that actually wasn't true.

20 And with all due respect to defendant's counsel,
21 stating, well, you know, it's something that can happen very
22 often in litigation, well, that material impacts how we are
23 able to litigate the case.

24 And, you know, with documents still being produced
25 after the close of discovery, despite the fact that they swore

1 under oath that they had been produced, well then, what else
2 would they be willing to swear under oath about falsely?

3 That's the question that's raised.

4 There is significant evidence that, you know, they
5 provided these statements that were not true, under oath,
6 signed declarations under oath that were not true, and
7 continued to produce new documents throughout the case.

8 THE COURT: And out of the 800 documents that you got
9 very recently, which I understand it's because some of that is
10 from this binder that you may not have gotten before, and
11 apparently they had no clue existed, does any of that make a
12 difference in terms of your case, really, other than that you
13 now have it?

14 In other words, other than this policy, does anything
15 in that 800 documents make a difference?

16 MR. MACDONALD: I would say yes, Your Honor, because
17 they go to student conduct. They go to -- it's over 800
18 hundred pages, so to be frank, I haven't gone through it
19 meticulously, but the policies relating to students, you know,
20 goes to the training of these individuals. And then outside of
21 the 800 documents we were given, we were also given, for
22 example, in late August the fiscal policies and procedures
23 document I tried to describe earlier.

24 Again, all of these things have bearing on plaintiff's
25 claims and we are getting them right before the close of

1 discovery after depositions have been taken.

2 That's fundamentally unfair and it can't be shrugged
3 off as, oh, well, it happens. You know, that's prejudicial.

4 THE COURT: On that score, don't I need to let you
5 evaluate how prejudicial it really is and whether or not it
6 requires me reopening any deposition?

7 MR. MACDONALD: I mean, I definitely think that that's
8 fair, and that's why I acknowledged, you know, if it was just
9 with respect to the policies, that would be true, because we
10 did get to ask questions in those depositions, but it's much
11 broader than that in terms of these policies and the different
12 versions we've received.

13 Still, is it -- the question still lingers, right, is
14 it the fiscal policies and procedures documents that we
15 received in late August or is it Exhibit 10. Genuinely, it is
16 an open question as to what was in effect at that time.

17 Of course, just the prejudice in bringing these
18 proceedings before the Court and, obviously, its impact on the
19 remainder of the evidence as I described previously.

20 MR. YOUNT: Your Honor, can I clarify one thing about
21 the documents produced yesterday?

22 THE COURT: Sure.

23 MR. YOUNT: Those were not produced as part of a
24 discovery response or for discovery. They were produced in
25 connection with this hearing because I asked Ms. Bernal to

1 bring her binder to show to the Court, when we say, it was in
2 this book with the financial, just for a demonstrative aid and
3 just as a matter of courtesy, I send it to them and say, look,
4 this is what she is bringing. This is current. This is for
5 the current year, and to the extent that any of the other
6 documents in that binder were discoverable in this case, we
7 produced them for the relevant time.

8 That's the only thing I wanted to say.

9 THE COURT: When you say you produced them, in other
10 words, some of what's in that binder was produced at the time.
11 Is that what you're saying?

12 MR. YOUNT: Yes. For the year, yes. Absolutely.

13 THE COURT: And how would you have done that without
14 looking at the binder?

15 MR. YOUNT: I didn't know the questions to ask.

16 So, we asked for policies on this, policies on this and
17 that's what we got.

18 I didn't say, where did you get it from, let me see the
19 binder, and I will decide what's in there. Bad communication.

20 THE COURT: Okay.

21 MR. YOUNT: But, for example, the student handbook is
22 in there. In that binder we produced the one from the relevant
23 school year, etcetera, etcetera, etcetera.

24 THE COURT: Right. Okay.

25 All right. Well, I guess what I want to do is, number

1 one, I do need to tie that down. I don't want to create
2 another process. So, I hear what he is saying so you need to
3 go through those 800 documents and tell me, A, was anything
4 responsive that should have been produced before?

5 B, his answer is some of that was produced it just
6 happens to be the one relevant back then as opposed to her
7 current one, right.

8 So, you kind of have to need to supplement this to tell
9 me if really there is anything prejudicial in there.

10 MR. MACDONALD: Well, I can tell you that they are
11 responsive to our request, and that's something I did clarify.

12 THE COURT: Right. But he is saying that you got
13 versions of those that were responsive because they were
14 relevant at the time because he is saying that 800-page binder
15 is the current binder.

16 At the time of the production, that wasn't the current
17 binder. It would have been a different series of documents.

18 MR. MACDONALD: Okay. I understand. My only response
19 to that would be, we haven't received the binder for that
20 applicable year, so that's the only one we received.

21 And then secondly, we requested policies up until the
22 present, and they would be under a continuing duty to
23 supplement in discovery to those specific documents, and they
24 were not produced.

25 THE COURT: But you understand the focus. I understand

1 that, but the focus on this is what they should have done back
2 before.

3 So, you kind of need to tell me how prejudicial it is.
4 So, I will let you -- since you now have them, tell me, if
5 anything, you can make a prejudice argument as to any of it.
6 So, I will let you supplement your motion.

7 MR. MACDONALD: Thank you, Your Honor.

8 Just to clarify, does that go for other documents that
9 were produced later on throughout the case?

10 THE COURT: Anything that was produced following the
11 filing of your motion I guess would be relevant to this point.
12 Because when was the discovery cutoff?

13 MR. MACDONALD: August 29th, I believe, Your Honor.

14 THE COURT: Oh, August 29th.

15 Oh, okay. So then -- all right. Well, August 29th
16 then it would be a different story.

17 In other words, if they are supplementing things, for
18 example, in August, A, they can supplement; but, B, you can
19 then raise, wait, this should have been produced when I deposed
20 Ms. Bello. So that's, I guess, included but that's the
21 analysis. Would it make a difference in terms of how you would
22 have responded had you known that prior to some of these
23 depositions?

24 MR. MACDONALD: Okay.

25 THE COURT: So it has to be more specific, but, again,

1 I won't limit it in time because some it -- some of that
2 supplemental is entirely appropriate. It's not necessarily
3 inappropriate to make sure that we have everything, in fairness
4 to the defendant, right.

5 So, you need to tell me if there is anything
6 prejudicial beyond what we've already talked about.

7 MR. MACDONALD: Understood, Your Honor.

8 Thank you.

9 THE COURT: Okay. I will wait to see what that is
10 because I don't want to do this multiple times, and then I will
11 enter an order on the evidentiary hearing once I get that, and
12 if I direct a response, obviously, I will need a response.

13 And then I will decide.

14 I will say that all your concerns are entirely valid.
15 The problem I am having is is it prejudicial enough to warrant
16 the case-dispositive sanctions. That's a tougher nut to crack.

17 And do you want me to strike the document, that's
18 something I can easily do, right, but you may not want me to
19 strike. So, I guess to some extent, in your supplemental, if I
20 grant alternative relief, do you want that as part of the
21 relief?

22 MR. MACDONALD: Okay.

23 THE COURT: So, why don't you think that through.

24 MR. MACDONALD: Okay, Your Honor. We will make sure we
25 address that as well.

1 THE COURT: Right, because you have it if you want it,
2 but you may not want it. It may not help your client's case,
3 in which case then that goes to their point that it's not
4 really prejudicial because their disclosure of that actually
5 could be something you could use, so that's all related.

6 So, in your supplement I want you to supplement your
7 request for alternative relief.

8 MR. MACDONALD: I guess it's kind of tied together, but
9 do you want us to address the rising to the level of a
10 Draconian sanction to file a judgment, as you mentioned before
11 in the supplemental finding?

12 THE COURT: No, I want you to address the more narrow
13 question to this because I think you already briefed and
14 presented that very well, so just limit it to that.

15 Then I will hold my fire until I get that.

16 MR. MACDONALD: Okay.

17 THE COURT: All right. Then, in the future, remember
18 to tell your clients about this story so that way you won't
19 have this problem, because I don't necessarily think there is a
20 problem with the lawyering. But I'm not necessarily making a
21 finding one way or the other, but this is what happens, when,
22 for example, you needed to go and see -- I always tell people,
23 go and see their client when they are doing their review
24 because you may see just walking into somebody's office, what's
25 that, what's that. And everybody -- we do everything now

1 remote and everything is done by virtual and you can't do that
2 anymore.

3 Okay. All right. Thank you.

4 COURT SECURITY OFFICER: All rise.

5 COURTROOM DEPUTY: All rise. Court is now adjourned.

6 (Proceedings were concluded at 5:15 p.m.)

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C E R T I F I C A T E

I hereby certify that the foregoing is an accurate transcription of the proceedings in the above-entitled matter.

October 28, 2024
DATE

/s/Patricia Diaz
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